(23,446)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 390.

THE PEOPLE OF PORTO RICO, PLAINTIFF IN ERROR,

vs.

BONOCIO RAMOS.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

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1 Filed June 26, 1912.

In the District Court of the United States for Porto Rico.

BONOCIO RAMOS, Plaintiff,
vs.
THE PEOPLE OF PORTO RICO, Defendant.

Præcipe for Record.

To the clerk of the above-entitled court:

In accordance with the order of the Judge of the above entitled court made and entered on the 20th day of June, 1912 allowing a writ of error to the Supreme Court of the United States on behalf of the above named defendant, you are hereby directed to prepare a duly authenticated transcript of the record, exhibits, proceedings, minute orders and papers in the above entitled cause, and in addition thereto, copies of the following papers in the case of Eliza Kortright v. Bonocio Ramos, No. 65 Law.

1. Summons.
2. Declaration in Ejectment.
3. Rejoinder.
4. Replication.
5. Sur-rejoinder.
6. Judgment.
7. Writ of Possession.

(Signed) WOLCOTT H. PITKIN, JR.,
Attorney General of Porto Rico and
Attorney for Defendant and Appellant.

2 Filed November 12, 1909.

In the District Court of the United States for Porto Rico.

BONOCIO RAMOS
vs.
EDUARDO WOOD, Judicial Administrator for the Estate of Eliza Kortright.

Ejectment. Mesne Profits $5,000.00.

Complaint.

The plaintiff complains and alleges that he is a citizen of Porto Rico and that the defendant is a subject to the Kingdom of Great Britain, residing at San Juan, Porto Rico.

That on the 1st. day of January 1907, the plaintiff was the owner, and entitled to the possession of that certain tract of land situate and described as follows, to wit:

A tract of land situated in the Barrio of Palmas Altas, Municipality of Barceloneta, Porto Rico, containing eighty (80) cuerdas of land, bounded on the North by the Atlantic Ocean and lands of José Antonio Fernandez; on the East by lands of Maria Angela Fernandez and the Caño de Tiburones; on the South by said Caño de Tiburones and on the West by lands of Francisco and Sotera Dominguez and those of Maria Angela Fernandez.

That while the plaintiff was such owner, and possessed and entitled to the possession of said premises, the said defendant claiming
3 that this property belonged to the estate of Eliza Kortright, of which he, is the duly appointed Judicial Administrator, did on the day and the year aforesaid without right or title, enter into and upon the same, and oust and eject the plaintiff therefrom, and ever since that day has withheld, and still withholds, the possession thereof from the plaintiff, to his damage in the sum of $5,000.00.

Wherefore, the plaintiff prays judgment against the said defendant:

1st. For the restitution of said lands and premises.

2nd. For $5,000.00 the value of the rents and profits thereof.

3rd. The costs of this suit, together with a reasonable sum for attorney's fees.

(Signed) FRANK ANTONSANTI,
Attorney for Plaintiff.

4 Filed November 12, 1909.

In the District Court of the United States for Porto Rico.

No. 682. Law.

BONOCIO RAMOS, Plaintiff,
versus
EDUARDO WOOD, Judicial Administrator for the Estate of Eliza Kortright, Defendant.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

The President of the United States of America, Greeting, to Eduardo Wood, Judicial Administrator for the estate of Eliza Kortright:

You are hereby notified that there has been filed in the Clerk's Office of the District Court of the United States for Porto Rico a certain complaint by the above named plaintiff against you in which he alleges that on the 1st day of January, 1907, he was the owner and entitled to the possession of a certain tract of land situated in the municipality of Barceloneta, Barrio of Palmas Atlas, containing 80 cuerdas, bounded on the north by the Atlantic Ocean and lands of Jose Antonio Fernandez; on the east by lands of María Angela Fernandez and the Caño de Tiburones and on the west by lands of Francisco and Sotera Dominguez and those of Maria Angela Fernandez; that while he was such owner and possessed, and entitled to possess said tract, you did, on the day and year aforesaid, without

right or title, enter into and upon same, and oust and eject him, and ever since said day you have withheld, and still withhold the possession thereof from him, to his damage in the sum of five thousand dollars ($5,000). Wherefore he prays judgment against you for the restitution of said lands and premises and for five thousand dollars (5,000) the value of the rents and profits thereof, and for the costs of this suit, together with a reasonable sum for attorney's fees.

You are hereby required to appear and answer said complaint within ten (10) days from the date of the service hereof, otherwise the plaintiff will apply to the Court for the relief demanded in the Complaint.

Witness the Hon. Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, and the Seal thereof at San Juan, this 12th day of Nov. A. D. 1909, and in the 134th year of the Independence of the United States of America.

Attest:

[SEAL.] (Signed) JOHN L. GAY, *Clerk*,
(Signed) By A. M. BACON, *Deputy*.

4½ *Return on Service Writ.*

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed Summons on the therein-named Eduardo Wood Judicial Administrator of the Estate of Eliza Kortright Together with copy of complaint by handing to and leaving a true and correct copy thereof, with him personally at San Juan, P. R. in said district on the 12 day of November, A. D. 1909.

(Signed) H. S. HUBBARD,
U. S. Marshal.
(Signed) F. E. BURNETT, *Deputy*.

5 In the District Court of the United States for Porto Rico.

Filed November 19th, 1909.

Law. No. 682.

BONOCIO RAMÓS, Plaintiff,
vs.
EDUARDO WOOD, Judicial Administrator for the Estate of Eliza Kortright, Defendant.

Ejectment. Mesne Profits, $5,000.00.

Motion to Make the People of Porto Rico a Party Defendant and for an Extension of Time to Plead.

Now comes the defendant above named by the undersigned attorney and moves the Court as follows:

That the People of Porto Rico has been declared and adjudged to be the sole heir of Elisa Kortright, deceased, by an order made by the District Court in and for the Judicial District of San Juan, P. R., the said Elisa Kortright having died intestate and without leaving any legal heirs.

That the People of Porto Rico by virtue of such declaration of heirship has an interest in the result of the above suit and ought to be joined as co-defendant in this suit.

That the defendant above named desired to have an extension of time to file a demurrer or answer to the complaint herein as he may be advised by his counsel, and desires the said time to be extended to and including the 2nd day of December, 1909.

Wherefore, the defendant respectfully prays for an order making the People of Porto Rico a party defendant in this action, and that proper service of all papers in this action be made upon the People of Porto Rico according to law, and further that the time for the defendant to plead to the complaint herein be extended to and including the second day of December, 1909.

(Signed) MARTIN TRAVIESO, JR.,
Attorney for Defendant.

6 In the District Court of the United States for Porto Rico.

Journal Entry, November 19, 1909.

Law.

BONOCIO RAMOS
vs.
EDUARDO WOOD, as Judicial Administrator of the Estate of Eliza Kortright.

Upon motion of Martin Travieso, Jr., Counsel for the defendant, Frank Antonsanti counsel for the plaintiff being present and consenting thereto, the former is granted five days' additional time in which to file his plea or answer in this cause.

Counsel for the defendant further moves for an order to make the People of Porto Rico a party defendant herein. The Court directs counsel to notify the Attorney General of Porto Rico of the filing of this suit, in order that he may enter his appearance for the People of Porto Rico if he so desires.

7 In the District Court of the United States for Porto Rico.

Filed November 26, 1909.

Law. No. 682.

BONOCIO RAMOS, Plaintiff,
versus
EDUARDO WOOD, Judicial Administrator for the Estate of Eliza Kortright, Defendant.

Ejectment. Mesne Profits, $5,000.00.

Answer.

Now comes the above named defendant by his Attorneys and answering the complaint herein, says:

That he denies each and every material allegation of the complaint filed in this action.

Wherefore the defendant prays that said complaint be dismissed with costs of the suit, together with a reasonable sum for attorney's fees.

(Signed) MARTIN TRAVIESO, JR.,
Attorney for Defendant.

8 In the District Court of the United States for Porto Rico.

Journal Entry, April 18, 1910.

Law.

BONOCIO RAMOS
vs.
EDUARDO WOOD, Judicial Administrator for the Estate of Eliza Kortright.

Upon application of Frank Antonsanti, this cause is set for trial on Saturday, the 23rd instant.

9 Journal Entry, April 23, 1910.

In the District Court of the United States for Porto Rico.

Law.

BONOCIO RAMOS
vs.
EDUARDO WOOD, Judicial Administrator of the Estate of Eliza Kortright.

This cause which was heretofore set for trial on this date, goes to the foot of the docket for the term, because of the failure of counsel to be present when same was called.

10 Filed August 16th, 1910.

In the United States District Court for Porto Rico.

Law. No. 682.

BONOCIO RAMOS, Plaintiff,
versus
EDUARDO WOOD, Administrator, Defendant.

Stipulation.

It is hereby stipulated and agreed by and between Frank Antonsanti, Attorney for the Plaintiff and Martin Travieso, Jr. Attorney for the defendant in the above cause, that the trial of *set* cause shall not be set until after the 15th day of November, 1910 and that no further steps shall be taken in the prosecution of the said suit until after the aforesaid date.

San Juan, August 13, 1910.

(Signed) FRANK ANTONSANTI,
Attorney for Plaintiff.

(Signed) MARTIN TRAVIESO, JR.,
Attorney for Defendant.

11 Journal Entry, November 18, 1910.

In the District Court of the United States for Porto Rico.

Law.

BONOCIO RAMOS
vs.
EDUARDO WOOD, Judicial Administrator for the Estate of Eliza Kortright.

This cause comes on for trial as per the order of its setting on the trial calendar, Frank Antonsanti appearing for the plaintiff and Martin Travieso, Jr., for the defendant. A jury is thereupon called, duly examined, sworn, and impanelled to try the issues joined between the parties, that is to say:

F. D. Amador	L. G. McGuigan
Waldemar Bithorn	Ramon Wolf
Fernando Domenech	Justo Barros
Arturo Fort	E. Gatell
O. I. Goble	F. M. Pennock
J. Q. McAdams	J. R. Latimer, Sr.

Whereupon it appearing that it is near the adjournment hour for the day, the further hearing in the cause is continued over until tomorrow morning, the jury being permitted to separate in the meantime, under proper instructions from the court.

12 Journal Entry, November 19, 1910.

In the District Court of the United States for Porto Rico.

Law.

BONOCIO RAMOS
vs.
EDUARDO WOOD, Judicial Administrator of the Estate of Eliza Kortright.

Come the parties with their counsel as on yesterday. The jury is called and all found present. Whereupon Harvey M. Hutchinson, representing the Attorney General of Porto Rico, petitions the court for a continuance of the trial for a time to enable him to ascertain if the People of Porto Rico should be made a party defendant in this cause. And the court having heard his petition in that regard, grants the same, and the cause is continued until the 21st instant, at 9 o'clock A. M., the jury being permitted to retire under proper instructions in the meantime.

13 Journal Entry, November 21, 1910.

In the District Court of the United States for Porto Rico.

Law.

BONOCIO RAMOS
vs.
EDWARDO WOOD, Administrator.

The trial of this cause is proceeded with as on Saturday, parties and counsel present as before; the jury being called and all found present. Whereupon H. M. Hutchinson, representing the Attorney General of Porto Rico, appears in behalf of the People of Porto Rico and represents to the court that the People of Porto Rico are interested parties to the action and the court having heard the arguments of the opposing counsel and being fully advised in the premises, orders that the People of Porto Rico be made a party defendant herein.

The jury is thereupon excused and the cause continued for the term and counsel for the plaintiff is directed to amend his complaint so as to show the People of Porto Rico to be a party defendant.

14 Filed December 15, 1912.

In the District Court of the United States for Porto Rico.

BONOCIO RAMOS
vs.
THE PEOPLE OF PORTO RICO.

Ejectment.

Complaint.

Comes now the Plaintiff in the above entitled action by his Attorney Frank Antonsanti, and complains against the defendant and alleges:

I.

That the Plaintiff is a citizen of the Island of Porto Rico, residing at Barceloneta and the Defendant is a body politic, created by the Congress of the United States being a citizen thereof.

II.

That on the first day of January 1906, the Plaintiff was the owner, and entitled to the possession of a certain tract of land situated and described as follows, to wit:

A rustic state situated in the barrio of Palmas Altas, municipality of Barceloneta, known by the name of "Llamadas" containing an area of fifty (50) cuerdas of land, of which twenty are low lands and the balance being sloping lands, bounded on the East by lands of Pedro José Fernandez, on the West by those of Carmen Peña and Antonio Milasio, on the South by the Caño de Tiburones and on the North by the Sea.

That while Plaintiff was such owner, and possessed and entitled to the possession of the said tract of land, one Eliza Kortright, since deceased, did on the day and year aforesaid without right or title, enter into and upon the same, and — out and ejected the Plaintiff therefrom and continued in possession thereof up to her death.

III.

That thereafter the estate of the said Eliza Kortright was placed under a judicial administration under the direction of Eduardo Woods, as judicial administrator, which judicial administra-
15 tion ceased during the month of November 1910, and the said Administrator was discharged.

IV.

That thereafter the Defendant The People of Porto Rico was adjudged by the District Court of San Juan, Porto Rico the only heir to the Estate of the said Eliza Kortright, as the said Eliza Kortright left no heirs.

V.

That the said Defendant, The People of Porto Rico, as the only heir of the said Eliza Kortright, continues to possess the said tract of land described herein without right or title thereto, against the will of the Plaintiff to his damage in the sum of six thousand dollars.

Wherefore the Plaintiff prays judgment against the said defendant the People of Porto Rico, for the restitution of the premises herein above described; for the sum of six thousand dollars ($6,000.00) the value of the rents and profits thereof together with the costs of this suit.

(Signed) FRANK ANTONSANTI,
Attorney for Plaintiff.

Copy of the foregoing complaint acknowledged this 25th, day November 1910.

(Signed) H. M. HUNCHINSON.

16 Journal Entry, September 2, 1911.

In the District Court of the United States for Porto Rico.

Law.

BONOCIO RAMOS
vs.
THE PEOPLE OF PORTO RICO, Formerly EDUARDO WOOD, Judicial Administrator for the Estate of Eliza Kortright.

Upon motion of Foster V. Brown, Attorney General of Porto Rico, his name is entered as Counsel for the People of Porto Rico, in the above entitled cause and has leave to file the demurrer to the amended Complaint on this date, and then and there the hearing of the said demurrer is set for Saturday, the 9th day of September, 1911.

17 Filed September 5, 1911.

In the District Court of the United States for Porto Rico.

No. 682.

BONOCIO RAMOS
vs.
THE PEOPLE OF PORTO RICO.

Comes Foster V. Brown, Attorney General of Porto Rico, and specially appearing for the sole purpose of challenging the juris-

diction of the Court in this case *and* demurs to the amended complaint for the following reasons:

I.

Because this is a suit between plaintiff, a citizen of Porto Rico, and the People of Porto Rico now the sole defendant, a body politic and corporate under an act of Congress—Both Plaintiff and defendant being citizens of Porto Rico within the meaning of the Act of Congress conferring jurisdiction on this court this Court has no jurisdiction.

II.

Because The People of Porto Rico as an organized entity is so far sovereign as to be exempt from suit at the instance of private individuals.

For these reasons defendant prays this Honorable Court to proceed no further herein and to dismiss this suit.

(Signed) FOSTER V. BROWN,
Attorney General.

I, Foster V. Brown, Solicitor for Defendant, do hereby certify that the foregoing demurrer in my opinion is well founded in law.

(Signed) FOSTER V. BROWN.

I, Foster V. Brown, Attorney General, being duly sworn, do say that the foregoing demurrer is not interposed for delay.

(Signed) FOSTER V. BROWN.

18 Sworn to and subscribed before me this 5th day of September, 1911.

(Signed) RAFAEL GUILLERMETY, *Clerk.*

19 Journal Entry, September 18, 1911.

In the District Court of the United States for Porto Rico.

Law.

BONOCIO RAMOS
vs.
THE PEOPLE OF PORTO RICO, Formerly EDUARDO WOOD, Judicial Administrator for Elisa Kortright.

The hearing of the demurrer filed in the above entitled cause, is set for Saturday, September 23rd, 1911, at 10 o'clock A. M.

Filed January 11th, 1912.

20 In the District Court of the United States for Porto Rico.

BONOCIO RAMOS, Plaintiff,

vs.

THE PEOPLE OF PORTO RICO, Defendant.

Ejectment.

Answer.

Comes now the defendant in the above entitled action, by its attorney, Foster V. Brown, Attorney General of Porto Rico, and waiving the demurrer heretofore filed in this case, for answer to the action says:

I.

Defendant supposes it to be true, as alleged, that the plaintiff is a citizen of the Island of Porto Rico, and it is admitted that the defendant is a body politic created by the Congress of the United States, and in this connection the defendant insists and pleads that defendant has such attributes of sovereignty as exempts it from suits such as the above entitled suit.

II.

Defendant denies that the plaintiff, on the 1st of January, 1906, or at any other time before or since, was the owner of and entitled to the possession of the land described in the second clause of the complaint; and defendant denies that Elisa Kortright, on the
21 day named or at any other time, entered upon the land and ejected plaintiff therefrom without right and without title. The truth is, as defendant alleges, that the plaintiff never at any time had title to any portion of the land sued for.

III.

It is true that on the death of Elisa Kortright her property was placed under judicial administration under the direction of Eduardo Woods, and it is true that this administration ceased during the month of November, 1910, and the Administrator was discharged,—at least, about that time.

IV.

It is true that the People of Porto Rico was adjudged by the District Court of San Juan the only heir to the Estate of the said Elisa Kortright, she having died intestate and without heirs.

V.

It is true that the People of Porto Rico, as the only heir of the said Elisa Kortright, continues to possess the said tract of land de-

scribed herein, but it is denied that the People of Porto Rico is without right or title thereto; and defendant denies that it is liable to the plaintiff for $6,000 and the value of rents and profits, or for any other sum of money, on account of said lands.

VI.

For further defense in this connection, defendant shows that prior to 1901 the plaintiff was setting up some kind of title or claim to the land described in this suit. On June 12, 1901, Elisa Kortright y Kenney sued the plaintiff in the District Court of the United States for Porto Rico, and alleged that she was the owner of an estate consisting of a certain tract of land with two houses and other improvements thereon, described and situated as follows:

22 "A rural estate situated in the barrio of Palmas Atlas, district of Barceloneta, Porto Rico, composed of eighty (80) cuerdas, equivalent to thirty-one (31) hectareas, forty-four (44) areas, and thirty-one (31) centiareas of land devoted to pasture and agricultural purposes; bounded on the West by the lands of Francisco and Sotera Dominguez and lands of Doña Maria Angela Fernandez; on the East by the lands of the aforesaid Maria Angela Fernandez and José Antonio Fernandez and by the Caño de Tiburones; on the North by the lands of the said Maria Angela and José Antonio Fernandez; and on the south by the said Caño de Tiburones."

The plaintiff was duly served with process and appeared and defended the action. The cause was tried at the October term, 1901, of the said Court, to writ, on the 2nd day of November, 1901, and on that day the jury duly and legally empaneled returned a verdict in favor of the plaintiff, Elisa Kortright, and found the defendant guilty of unlawfully withholding from her the premises above described. The Court thereupon ordered and adjudged that the plaintiff in that suit, Elisa Kortright, recover from the defendant in that suit the possession of the said premises in accordance with the verdict of the jury, and from that judgment there was no appeal, and said judgment is still in full force and effect. Soon after the rendition of this verdict and judgment, Elisa Kortright had her title to the estate recorded in the Registry of Property of Arecibo at Folio 173 over, Volume 12 of Barceloneta, Finca No. 687, 2nd Inscription. In accordance with the judgment of the Court, a writ of possession was issued, and Elisa Kortright was placed in possession of said eighty cuerdas of land described above.

Notwithstanding this judgment of the Court and the possession which had been given to the said Elisa Kortright, the plaintiff continued to set up some kind of a claim to said land. Thereupon, on November 3, 1903, Elisa Kortright filed a bill in the United States Court praying for an injunction against the plaintiff, who was cutting cane which had grown on the finca in Palmas Altas.

23 The plaintiff filed an answer in which he disclaimed ownership in any part of the property; but it was disclosed that the wife of Ramos claimed title to eleven cuerdas of the eighty cuerdas

referred to. Thereupon the Court made an order requiring the wife of Ramos to be made a party defendant to the suit. Ramos' wife appeared and answered the bill, and in that answer alleged ownership in a parcel of eleven cuerdas,—part of the eighty cuerdas recovered by Mrs. Kortright from Ramos in 1901. On the final hearing of the matter the Court found that the eleven cuerdas claimed by Mrs. Ramos did in fact belong to her, and the eleven cuerdas were duly delivered to her with damages for the detention thereof. So that, instead of the People of Porto Rico owning the whole eighty cuerdas so recovered from Ramos in the first instance, it now appears that eleven cuerdas really belong to Mrs. Ramos, and the same have been turned over and delivered to her.

Attention is called to the fact that in the amended complaint filed by the plaintiff the description appears to be a different estate from the one recovered by Elisa Kortright from the plaintiff in 1901. It is, in fact, the same one with the boundaries somewhat changed. This appears very plainly from the reading of the original complaint filed by Mr. Ramos on November 12, 1909, in which the description of the property is exactly the same as in the suit had in 1901. The change in the description is due to the fact that the Administrator of the estate of Elisa Kortright had to turn over, and did turn over, to Mrs. Ramos the part of the original plantation consisting of eleven cuerdas.

So the defendant now shows the Court that, by judgment of this Honorable Court in a suit between Elisa Kortright and the plaintiff, it was ordered and adjudged that Elisa Kortright was the owner of the very land plaintiff is now suing The People of Porto
24 Rico to recover; and so the defendant comes and relies upon the plea of res judicata as a complete bar and answer to plaintiff's claim.

Besides all this, the defendant says that the plaintiff never at any time had any title or right to any portion of the land sued for.

(Signed) FOSTER V. BROWN,
Attorney General of Porto Rico and
Attorney for Defendant.

UNITED STATES OF AMERICA,
Island of Porto Rico, ss:

Foster V. Brown, being first duly sworn, on oath deposes and says:

That he is the Attorney General of Porto Rico and the Attorney of the defendant in this case, and that he has read the above Answer and states the facts alleged therein as true of his own knowledge, and the facts stated on information and belief he believes to be true.

(Signed) FOSTER V. BROWN.

Affidavit No. —.

Subscribed and sworn to before me by Foster V. Brown Attorney General of Porto Rico, of legal age, resident of this municipality, and personally known to me, this 11th day of January, 1912.

(Signed) RAFAEL GUILLERMETY,
Clerk Dist. Court of U. S. for P. R.

25 District Court of the United States for Porto Rico.

#954—196.

THE UNITED STATES OF AMERICA,
District of Porto Rico, ss:

The President of the United States of America to the Marshal of the District of Porto Rico, Greeting:

We command you to summon Eduardo Georgetti of the district aforesaid, if he be found in your bailiwick, to be and appear before the District Court of the United States for Porto Rico at San Juan, on the forthwith to give evidence on behalf of the defendant in a suit pending in said court wherein Bonocio Ramos is plaintiff, and Edward Wood, Adr., etc., defendant.

Hereof fail not; and of this writ make legal service and due return.

Witness the Honorable Paul Charlton, Judge of the District Court of the United States for Porto Rico, this 22 day of April, 1912, and in the 13 year of the Independence of the United States of America.

(Attest.)

(Signed) RAFAEL GUILLERMETY, *Clerk,*
(Signed) By A. AGUAYO, *Deputy Clerk.*

[Endorsed:] No. —. In the District Court of the United States for Porto Rico. Bonocio Ramos v. Eduardo Wood, Administrator. Subpœna for Witness. Filed April 25, 1912. (Signed) Rafael Guillermety, Clerk, By (Sgd.) N. V. Colburn, Deputy. Marshal's Fees: Service, $50¢. Marshal's Expenses, $—.

25½ *Return on Service Writ.*

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed Subpœna on the therein-named Eduardo Georgetti by handing to and leaving a Subpœna with him personally at San Juan in said district on the 22nd day of April, A. D. 1912.

(Signed) H. S. HUBBARD,
U. S. Marshal,
(Signed) By F. E. BURNETT, *Deputy.*

26 Journal Entry, April 22, 1912.

In the District Court of the United States for Porto Rico.

Law.

BONOCIO RAMOS
vs.
EDUARDO WOOD, Judicial Administrator for the Estate of Eliza Kortright et al.

The demurrer filed by the defendant in the above entitled cause, is heard by the Court and after being duly considered, same is overruled according to law.

27 *Translation.*

Copy Number 148.

At Manatí on the 13th day of October 1879, before me Don Manuel Paz, Notary of the territorial college, of Porto Rico having my residence and office in this town, together with the competent number of witness-, appeared Don Nicasio Ramos of age agriculturist and of this vecinity with his "cedula" which he presents to me and take due note thereof, And the said party assuring me that he is in the full enjoyment of his civil rights, I the Notary considering him to have the necessary legal capacity for the execution of this deed, and I certify as to knowing him and he stated. That on the 14th of Sept. 1856 his legitimate mother María Francisca Suarez, of Bayamón died at barrio of Palmas Atlas of this jurisdiction, leaving as her only heir of her property, the appearing party which property consisted in a property called "Llanadas" situated in the said barrio, containing fifty cuerdas of land of which 20 are low lands and the balance high lands, bounded on the East by Pedro José Fernandez, West by Carmen Peña and Antonio Milasio; South by the Caño de Tiburones and on the North by the sea. That ever since the last above date the said property has been of the exclusive property in Dominion of the speaker. That therefore, for the affection which he professes for his legitimate wife Juana Antonia Caballero, he has donated the said finca although up to this time had not had the opportunity to give her a conveyance therefore, and in order to legally make said donation by these presents and in the manner and form which the law requires. States: That he ceed-s and donates in favor of his said wife Juana Antonia Caballero absolutely the property heretofore described and as stated was obtained by him through inheritence from him mother of *of* which fact his said wife
28 has complete knowledge and in consequence thereof, he relinquished all rights of property and dominion to said property in favor of his said wife and her legitimate heirs or successors, without reservation or limitation of any kind, all as evidence of the

high -steem and love which he professes for her. He declares that this donation is not immense nor does it exceed the 500 maravedis gold which the law permits in cases of donations.

And that this deed may have all the strength he desires the binds himself not to again transfer this property or in any other manner dispose thereof, and in case he should, he desires that he should not be heard in any hearing in court or out of a court binding himself facthfully with all his property both present and future, renouncing all laws which might benifit him. Doña Juana Antonia Caballero being present, of age, married and of this vecinity with her cedula of which I take due note and who I know personally being informed of the contents hereof stated that she accepts the same and thanks her donar for the gracious act. This they stated, and ratity and Doña Antonia does not sign as she does not know how and the witness D. Ventura Rodríguez does so at her request together with the other witness José A. Pavía who are residents of this town to all of which I hereby certify. (Sig.)—Nicasio Ramos=V. Rodríguez=José A. Pavía=(Sig.)—Manuel Paz.

This is the first copy of the original deed on file in my protocol bearing said number. In witness whereof and at the request of D. Nicasio Ramos, I issue the foregoing in one whole sheet of paper, stamped 2° the original being on a 3rd where I make due note of the is-uance of this copy, which I sign at Manatí on the 5th day of December 1897.=(Sig.)—Manuel Paz.

29 Journal Entry, April 22, 1912.

In the District Court of the United States for Porto Rico.

Law.

BONOCIO RAMOS
vs.
EDUARDO WOOD, Judicial Administrator for the Estate of Elisa Kortright et al.

This cause came on for trial. Whereupon comes the plaintiff in his own proper person and by his counsel, Frank Antonsanti, and comes the defendant by his counsel W. N. Landers. A Jury is thereupon called, duly examined, sworn and impaneled, as follows:

José E. Muñoz
Hernand Behn
J. H. Judd
Frank Harding
Rafael Romen
N. Megwinoff
José Civilles
Angel A. Rossy
E. D. Delgado
Arturo Bravo
Pragnacio Loran
José Ramón Loubriel.

The trial is thereupon proceeded with. Come also the witnesses for both sides, who are duly sworn. All the evidence on behalf of both plaintiff and defendant is heard and concluded. The Jury hears the arguments of counsels and the instructions of the Court on the law in the case, and then retire to their room to consider of their verdict. And thereafter, this same day, they return into Court the following verdict, that is to say:

Verdict.

"We, the Jury, find for the Plaintiff and assess his damages in the sum of Six Thousand Dollars and — Cents. Arturo Bravo, Foreman."

Which said verdict is read by the Clerk and the Jury being asked if that is their Verdict, they all answer that, "It is." And Thereupon the Clerk is ordered to file and enter of record said verdict, and the Jury is discharged from further consideration of this cause.

Judgment.

Wherefore it is ordered and adjudged that Bonocio Ramos, the Plaintiff herein, is the owner and entitled to whatever rights and interests the defendant, The People of Porto Rico, might have had in and to the said premises described in the amended complaint, that is to say:

A rustic estate situated in the barrio of Palmas Altas, municipality of Barceloneta, known by the name of "Ilanadas" containing an area of fifty (50) cuerdas of land, of which twenty are low lands and the balance being sloping lands, bounded on the East by the lands of Pedro José Fernandez; on the West by those of Carmen Peña and Antonio Milasio; on the South by the Caño de Tiburones and on the North by the Sea.

And that plaintiff, Bonocio Ramos do further recover from said defendant, the People of Porto Rico, the amount of Six Thousand Dollars ($6,000.00) damages, with interest thereon at 6% from this date until paid and his costs herein laid out and expended to be taxed by the Clerk, for which sums execution may be issued.

31 In the District Court of the United States for Porto Rico.

BONOCIO RAMOS
versus
EDUARDO WOOD et al.

Transcript of Testimony.

32 *Index of Witnesses.*

Name.	By whom called.	In record from page	to page.
Antonsanti, Frank,	Plaintiff	12	13
Ferran, Marcial,	"	9	12
Giorgetti, Eduardo,	Defendant	26	29
Harvey, Arthur J.,	"	18	19
Ramos, Bonocio,	Plaintiff	1	8
Ramos, Bonocio,	"	14	18
Ramos, Bonocio,	Defendant	20	24
Wood, Eduardo	"	26	29

33 In the District Court of the United States for Porto Rico.

No. 682. Law.

BONOCIO RAMOS
vs.
EDUARDO WOOD et al.

Case Tried April 22, 1912.

Transcript of Testimony.

BONOCIO RAMOS, being called as a witness in his own behalf, was duly sworn and testified as follows:

Direct examination by Mr. ANTONSANTI.—Interpreted:

Q. State your name.
A. Bonocio Ramos.
Q. How old are you?
A. Fifty-five years old.
Q. Where do you live?
A. In Palmas Altas.
Q. Where is Palmas Altas?
A. It is a ward of Barceloneta.
Q. Where were you born?
A. In Palmas Altas.
Q. What was the name of your father?
A. Nicasio Ramos.
Q. And your mother?

A. Juana Antonia Caballero.

Q. How many children did they have?

34 A. I alone.

Q. You were the only child?

A. Yes, sir.

Q. Where were you born, Mr. Ramos, in relation to this property of fifty acres that we are claiming here today?

A. Right there on the property.

Q. And how did you obtain it?

The COURT: He hasn't testified he did. He said he was born there.

Q. Who did that property belong to?

The COURT: When?

Q. During the time that you lived on that property, who did it belong to?

A. First it belonged to my father, and afterwards to me.

Q. Are those the only two owners of that property you have known or recognized?

A. Yes, sir.

Q. Uninterrupted, was that possession?

A. Yes, without interruption.

Q. Kindly state to the Court and jury who is in possession of that property now?

A. That property is now in the possession of The People of Porto Rico, and it is under lease to the Plazuela Central or plantation.

Q. Mr. Ramos, you remember of the war, do you not; when the war took place between Spain and the United States?

A. Yes, sir.

Q. Now, fixing that as a date, as a point to start from; first, did you know Eliza Kortright?

35 A. I did.

Q. How intimately did you know her?

A. We were friends during our childhood.

Q. You have known her then since your childhood?

A. Yes, sir.

Q. Was she your age, more or less?

A. She was somewhat older.

Q. Did you ever have any litigation with her in this court?

A. Yes, sir.

Q. State what it was all about.

A. For a property which I had of eighty cuerdas through an expediente which I had started, and she brought litigation and she took hold of the property, and afterwards she claimed that her lands were not complete and she filed an injunction.

Q. Now how long after that first suit of the eighty cuerdas was it that she came on with this injunction that you speak of?

A. About six years, more or less.

Q. You mean six now or from the first suit?

A. The first suit was about ten or eleven years ago and the other one six years ago.

Q. Go ahead with your statement.

A. After the injunction was filed, I made my claims through Mr. Hawkins, and then the Court ordered that some tracts of land belonging to my wife be returned to me, and besides, those lands which we are claiming now.

Q. Did they ever return to you that fifty cuerdas which you took?

A. No, sir; they only returned the tracts belonging to my wife.

Q. And were these fifty cuerdas taken away from you at
36 the same time that the land of your wife was taken?

A. Yes, sir.

Q. And that fifty cuerdas, has that any connection with the eighty acres that she took away from you in 1900 or 1901?

A. No, sir; that is another property which lies somewhere else.

Q. What was the other property called and known as, the property of eighty cuerdas; did that have any special name?

A. I believe they call it "Llanadas", and I think they have a name called "Iguelito".

Q. Then the eighty cuerdas were called "Iguelito"?

A. Yes, sir.

Q. And the fifty cuerdas were called "Llanadas"?

A. Yes, sir.

Q. Mr. Ramos, state to the Court and jury what kind of land composed that fifty cuerdas of yours.

A. For cane.

Q. And what is the rental value of that fifty acres per year per acre?

A. About twelve dollars; it might be twelve dollars.

Q. Per acre per year?

A. Yes.

Q. Or a dollar a month a cuerda?

A. Yes.

Q. Do you consider that a fairly reasonable figure for the rental value?

A. Because that is the price that they used to charge in that locality.

Q. Did you ever plant cane?

A. Yes, sir.

Q. You consider yourself an agriculturist, do you?
37 A. Yes, sir.

Mr. ANTONSANTI: That is all.

Cross-examination by Mr. LANDERS:

Q. Where is this land located, Mr. Ramos, that you are suing for in this action?

A. In Palmas Altas, in the ward of Barceloneta.

Q. Where is the land located which Miss Kortright recovered from you in 1901?

A. They follow that line near the Caño de Tiburones towards the Iguelito.

Q. How far is it from the land which you are seeking in this action?

A. They are almost on the same boundary; you just have only to cross a lake that is there.

Q. How many tracts of land did Eliza Kortright own in that neighborhood?

The COURT: Do you think that is cross-examination? Or do you think it is the best source of information?

Mr. LANDERS: I am trying to find out what she owned.

The COURT: The registry of property would be the best source of information.

Mr. LANDERS: I withdraw the question.

Q. I will ask you whether or not you filed a complaint in this case against Eduardo Wood as administrator, in which you sued for eighty acres, the same tract of land which she had recovered from you in 1901.

Mr. ANTONSANTI: I object to that as not being cross examination.

38 Mr. LANDERS: Our whole theory of this is that this is res adjudicata. That she recovered against him and that he came in and filed a disclaimer.

The COURT: That is your own proof.

Q. Did these fifty acres form a part of the eighty acre tract which Eliza Kortright recovered in 1901?

A. No, sir.

Q. How far distant is it from that tract?

A. Part of them are on the same boundary line towards the south.

Q. Well, how far; one mile?

A. No, there is no distance.

Q. Well, what do you mean; 100 yards, ten feet?

A. A short distance; I am not familiar with that.

Q. Whose land intervenes between these two tracts?

A. There are lands of my wife on one side and on the other, and also some lands of my own too. Those lands lie between the lands of ourselves, of myself and my wife?

Q. A bill in equity was filed against you in 1904, was it not?

A. Yes, sir.

Q. And in that action you filed a disclaimer to any lands there claimed by Eliza Kortright, did you not?

Mr. ANTONSANTI: We object to that. If Your Honor sees the complaint. He was in possession in 1904 and we allege that we were dispossessed in 1906.

The COURT: Is that a fact, Mr. Landers?

Mr. LANDERS: In November, 1903, the complaint was filed. Now at that time he filed a disclaimer to this property.

The COURT: Which property?

Q. To the bill in equity which was filed in 1903 by Eliza Kortright against yourself, did you not file a disclaimer to the property which was the subject of that action?

Mr. ANTONSANTI: We object to that as being immaterial because we only claim that we were dispossessed in 1906, three years after that date.

The COURT: That is sustained because he might have acquired any kind of a title in the interval between 1903 and 1906. The objection is sustained.

Mr. LANDERS: You allege you were dispossessed in 1906?

Mr. ANTONSANTI: Yes, sir.

Q. Who dispossessed you in 1906?

A. Kortright.

The COURT: Who took it away from him in 1906?

A. First she took away the property from me.

Q. Who is she?

A. Kortright, and afterwards she filed that injunction.

Mr. LANDERS: Now that shows that she filed the injunction after 1906, after she was dispossessed, when he came in and filed a disclaimer.

The COURT: He filed his disclaimer, you said, in 1903.

Mr. ANTONSANTI: He is referring to the eighty cuerdas in 1901.

The COURT: Let me see if I can clear it up.

The COURT:

Q. In 1901 Eliza Kortright took away eighty cuerdas from you; is that right?

A. Yes, sir.

Q. Well, when did she take away the fifty cuerdas from you?

40 A. After the injunction which she filed in 1906.

The COURT: That ought to be clear now.

Mr. LANDERS:

Q. You recovered certain property from her in 1901, didn't you?

Mr. ANTONSANTI: We object to that. As soon as they show that they returned this fifty, it will be permissible.

The COURT: We are concerned here with nothing but fifty acres. There is nothing else involved here in any way. And he testified unequivocally that the fifty and eighty are two separate pieces of property, and until you can rebut that and show that they are identical, this is improper cross-examination and improper at this time, and you can put it in when you come to it in any way by permissible evidence, but this is not proper cross-examination.

Mr. LANDERS: No further questions.

Witness retires.

Mr. ANTONSANTI: I desire now to present a written title to this property.

Mr. LANDERS: No objection.

The COURT: Let it be received. Do you wish to read it to the jury?

Mr. ANTONSANTI: Yes, sir.

The COURT: Who made the translation?

Mr. ANTONSANTI: I myself. (Reads the document in question to the jury.)

41 The COURT: Let it be received without objection.

The document in question was then placed in evidence and marked: Exhibit A for the plaintiff.

The COURT: Is it denied that the property is now in the possession of The People of Porto Rico?

Mr. LANDERS: We don't know where this property is. We admit that we are in possession of certain property there under the order of this court.

MARCIAL FERRAN, being called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct examination by Mr. ANTONSANTI—interpreted:

Q. What is your name, please, sir?
A. Marcial Ferran.
Q. What is your age?
A. Sixty years.
Q. Where do you live?
A. In Porto Rico, in San Juan.
Q. Are you acquainted with the plaintiff in this case?
A. I know him.
Q. How long have you known him?
A. Since I was born.
Q. How long have you been living in San Juan?
A. Ten years.
Q. Where were you born?
A. In Barceloneta.
Q. How near the barrio of Palmas Altas?
42 A. About half a mile.
Q. And how long have you lived in that barrio?
A. Since I was born.
Q. And you are sixty years old you say?
A. Yes, sir.
Q. And do you know where Bonocio Ramos, the plaintiff, lived or lives out there?
A. Yes, sir.
Q. How do you know? Did you visit there?
A. I lived right there.
Q. Do you know the properties that Bonocio used to own there when you lived there?
A. Yes, sir.
Q. Well, tell us a few of them.
A. He had some tract of land and some other farm which he had there.

Q. Did you ever know a tract of land which Bonocio owned, of fifty cuerdas?
A. I did.
Q. And did you know a property which he used to own of eighty cuerdas?
A. Yes, a property which he had of eighty cuerdas.
Q. And besides that did you know him to own any other property there?
A. Yes, he owned other tracts of land.
Q. All in the barrio of Palmas Altas?
A. Yes, sir.

Mr. ANTONSANTI: That is all.

Cross-examination by Mr. LANDERS:

Q. Where is this tract of land of fifty acres located, which
43 he is suing for in this action?
A. On the boundary line of the Cañon de Tiburones.
Q. Did you know a tract of land owned by Eliza Kortright?

The COURT: Where?

Q. In the barrio of Palmas Altas in the jurisdiction of Barceloneta.
A. I knew several properties which she had, but I don't remember them exactly.
Q. Do you know a property which she owned in 1901 in that barrio?

The COURT: Identify it by cuerdas or location.

Q. Eighty cuerdas located in the barrio of Palmas Altas, municipality of Barceloneta.
A. I have already stated that I knew properties which she owned there.
Q. I am asking him if he knew this one piece.
A. I don't know whether it belonged to her or not.
Q. Do you know where this tract of eighty acres is situated?

The COURT: What tract of eighty acres?
Mr. LANDERS: He said he didn't know whether the eighty acres belonged to her or not, so he must have known that there was a tract of eighty acres up there.
The COURT: Put the question to him direct.

Q. Do you know a tract of land of eighty acres owned by Eliza Kortright in the barrio of Palmas Altas, jurisdiction of Barceloneta?
A. No, I did not.

Mr. LANDERS: That is all.

44 Mr. ANTONSANTI: That is all. I have three more witnesses, but their testimony is cumulative and I will reserve them for rebuttal. Plaintiff rests.
Witness retires.

FRANK ANTONSANTI, being sworn as a witness in behalf of the plaintiff, testified as follows:

My name is Frank Antonsanti; I am a lawyer and I am the attorney for the plaintiff in this case.

Q. Did Bonocio Ramos come to your office to entrust you with the filing of the suit which is being litigated now?

A. Yes, sir.

Q. What papers did he deliver to you for you to draw the complaint in this case?

A. He delivered to me two titles; one, a deed calling for fifty cuerdas of land, and I will say now that that is the deed presented here in evidence, and he delivered to me a possessory title to eighty cuerdas of land.

Q. As attorney for Bonocio Ramos, how did you come to incorporate in your original complaint the description of this property as containing eighty cuerdas?

A. That was a mere clerical error in the office. When dictating this complaint, instead of referring to the title of fifty cuerdas, we simply referred to the eighty cuerda title, not being then well advised as to the conditions of this case, but after Bonocio came and looked over the complaint, the plaintiff himself called my attention to the fact that the eighty cuerdas was not in litigation, and that the property that should be in litigation was the fifty cuerda tract.

Q. Did you thereupon make any application to this court to amend?

A. Yes, sir; I filed a verbal motion which was argued by Mr. Hutchinson of the Attorney General's office, and argued the day following by Mr. Brown, when it was consented that I should amend, and that is the amended complaint as it now appears.

The COURT:

Q. And upon it you are now proceeding?

A. And upon which we base our claim and proceeding in this case.

Mr. LANDERS: No questions.

Witness retires.

The trial is adjourned to two p. m. same day.

2 P. M., APRIL 22, 1912.

Mr. LANDERS: With the permission of the Court, I would like to further cross-examine the witness Bonocio Ramos.

Mr. ANTONSANTI: We object to that.

Mr. LANDERS: Certain developments have arisen in this case, which I was unaware of during the morning session. For that reason I could not cross-examine this plaintiff, and for that reason alone I ask the indulgence of the Court.

The COURT: Wasn't the evidence in existence this morning?

Mr. LANDERS: It may have been in existence, but I have
46 been busy with the grand jury and have had no time to prepare this case, and expected this case would not come on until tomorrow morning.

The COURT: I think I can safeguard your case.

Mr. ANTONSANTI: He is limited to what this witness testified to this morning.

Mr. LANDERS: There was a certain deed introduced in evidence this morning, and it is in reference to that deed that I want to ask him certain questions.

The COURT: Confine it strictly to that deed.

Mr. LANDERS: It is matters with reference to that deed.

The COURT: Are you going to ask him any question?

Mr. LANDERS: I am going to ask him this question.

BONOCIO RAMOS, being recalled for further cross-examination, testified as follows:

Cross-examination by Mr. LANDERS:

Q. What evidence of title he introduced in the suit in 1901, in ejectment, in the case of Eliza Kortright against himself; what evidence of title he introduced as a defense to that action.

Mr. ANTONSANTI: I object to that.

Mr. LANDERS: If I can show by this witness that the same deed that he presented here this morning as evidence of title to this fifty acre tract was used by him in his defense in the action of ejectment brought by Eliza Kortright in 1901, then I say that it is a matter of res adjudicata.

The COURT: I can't so see it. The deed introduced this morning called for fifty cuerdas. The amount of land which was in
47 controversy in the other action was eighty acres.

Mr. LANDERS: That is very true.

The COURT: She sued him in ejectment, did she not?

Mr. LANDERS: She did.

The COURT: He was in possession?

Mr. LANDERS: Yes, sir.

The COURT: And he testified this morning that he has been continuously in possession of the eighty acres. He said that these fifty acres do not comprise a part of the eighty acres; that it was segregated by a property belonging to himself. He said there was land belonging to himself and wife between the two pieces.

Mr. LANDERS: If I can show that he introduced the same deed in her action of ejectment for the eighty acres, that he now proposes to offer, I think it is entirely competent.

The COURT: Are there no plats in existence?

Mr. LANDERS: There are no plats in existence.

The COURT: Why not?

Mr. LANDERS: I don't know where it is. We are brought into court. We didn't start this action.

The COURT: I understand that. Do you want to be heard, Mr. Antonsanti?

Mr. ANTONSANTI: The only way that this evidence can be material is to show, first, that that paper was the only defense made in that eighty acre suit. If the records of this court show, and the
48 records do show that there were other titles, what is the value of this testimony?

The COURT: Wasn't there any other evidence in that action?

Mr. ANTONSANTI: That is what he must show before this is competent.

The COURT: I think that is correct.

Mr. LANDERS: I will show that in the case of Eliza Kortright versus Ramos, No. 65, that the only evidence or paper title was Exhibit A, two packages containing old books and receipts; Exhibit B for defendant, deed No. 148 executed before Notary Public Manuel Paz; Exhibit C for defendant, certificate of the Municipality of Manati; Exhibit D for defendant, certificate of the Registrar of Property of Arecibo; Exhibit E for defendant, certificate of death of Nicasio Ramos; Exhibit F for defendant, certificate of death of Antonia Caballero. That is the only record evidence introduced of the title of the defendant and upon that evidence we received a verdict in that case.

The COURT: I think it is proper that you should introduce that now. I don't think I should let you cross-examine this witness. You may offer that evidence.

Mr. LANDERS: I make the demand on Frank Antonsanti for Exhibit B, deed No. 148, executed before Notary Public —— ——. I have his receipt taken from the Clerk's office of the District Court of the United States for Porto Rico.

Mr. ANTONSANTI: May I answer that request?

The COURT: I think so.

49 Mr. ANTONSANTI: First, I will say, this is no complete record of what evidence was produced in that case. This is a mere receipt of mine given the Clerk for certain exhibits withdrawn. There may have been a thousand receipts, and I may say for his own information that the deed referred to is the deed I offered this morning. It is a public document and a copy may be obtained from the notary's office where that was gotten.

The COURT: How is this material?

Mr. LANDERS: They have alleged that this is no part of the eighty acres, and they can't come up one day and say this is a part, and then another day come in and say that it is not a part of the eighty acre tract.

The COURT: This doesn't show that it was a part of the eighty acre tract.

Mr. LANDERS: It is presumed that the defendant will bring the best evidence possible to sustain his contention. I have the record in the case.

The COURT: Well, introduce it. Don't draw inferences from records that you don't introduce.

Mr. LANDERS: I introduce copy of a deed, No. 148, Exhibit B for defendant in the case of Kortright v. Ramos.

The COURT: What number of this court?

Mr. LANDERS: It was taken from the files of No. 65.

The COURT: Any objection? How many cuerdas does
50 this call for?

Mr. LANDERS: Fifty cuerdas with the same boundaries described in the complaint which the plaintiff now seeks to recover.

Mr. LANDERS: I would have no objection, if Your Honor please, to let this deed go in evidence, because it is a translation in fact of the deed that I have presented in evidence for myself, but I do not admit that this deed was presented in that suit No. 65 as evidence of title of the eighty acre tract of land. It might have been introduced for some other purpose.

Witness retires.

ARTHUR J. HARVEY, being called as a witness in behalf of the defendant, was duly sworn and testified as follows:

Direct examination by Mr. LANDERS:

Q. What is your name?
A. Arthur J. Harvey.
Q. What, if any, official position do you hold?
A. Official stenographer of this court.
Q. Who was the reporter of this court in 1901?
A. Mr. Harry P. Leake.
Q. Where is he now?
A. He is dead.
Q. Are you acquainted with his handwriting?
A. I am.
51 Q. (Handing a document to the witness.) Can you tell whether that is his writing?
A. That in ink is, but I am not certain about that in pencil.

Mr. LANDERS: That is all.

Mr. ANTONSANTI: No cross examination.

Witness retires.

Mr. LANDERS: I ask that this be offered in evidence.

The COURT: For what it is worth, it may be admitted.

Mr. ANTONSANTI: I object to the admission of this deed if it is to prove that that deed was presented as evidence in the ejectment case of Eliza Kortright v. Bonocio Ramos, to prove that that was the title to the eighty acre tract of land sued for in that suit, or any part thereof.

Mr. LANDERS: I offer it for that purpose.

The COURT: Well, it is not received for that purpose, because it is not sufficiently identified in the first place, and because it would carry with it by implication that the title was based on that, which does not appear.

Mr. LANDERS: Then I ask to call Mr. Ramos.
The COURT: You may do that and make him your own witness.

52 BONOCIO RAMOS, being recalled as a witness in behalf of the defendant, testified as follows:

Direct examination by Mr. LANDERS.—Interpreted:

Q. You are the plaintiff in this action?
A. Yes, sir.
Q. You were also defendant in the case of Eliza Kortright v. Bonocio Ramos, a suit in ejectment filed in June, 1901, in this court?
A. In the first suit, yes.
Q. That was an action in ejectment to recover eighty acres of land, was it not?
A. Yes, that she wanted to recover from me.
Q. What record of title did you introduce in that action as a defense to the recovery by the plaintiff in that action?

Mr. ANTONSANTI: I object to that question on the ground that the record of this court is the best evidence as to what muniments of title he produced here.
The COURT: That is the only way you can prove it.
Mr. LANDERS: He has the original of it.
The COURT: The original of what?
Mr. LANDERS: Of this deed that has been introduced.
The COURT: The deed has been received and it is not controverted that it is the deed, but the legal inference is controverted that the title to the eighty acres in the former suit was established by that. Are there no records to prove what took place there?
53 Does the journal of this court not show?
Mr. ANTONSANTI: I will call my friend's attention to the fact that I think my friend is laboring under a misapprehension.
The COURT: This is an entirely irregular way to prove this.
Mr. LANDERS: I am taking the documents as they are at that date.
The COURT: You have got the deed in. Now what do you want?
Mr. LANDERS: I want to find out what documents he introduced in the case of Eliza Kortright v. Bonocio Ramos.
The COURT: Why don't you introduce the records of the court?
Mr. LANDERS: I offer the records and files, the journal entries, the appearance docket and the journal in the case of Eliza Kortright v. Bonocio Ramos, No. 65.
The COURT: Let me make the offer to you. That is too indefinite. That doesn't mean anything. (The papers in the case are handed to the Court.) Do you want to offer all of this?
Mr. LANDERS: All of it.

(The court takes a recess to enable counsel to arrange his papers).

Mr. LANDERS: I offer in evidence the summons in the case of Eliza Kortright v. Bonocio Ramos y Cobian, the declaration in

ejectment in the same case, rejoinder, replication, sur-rejoinder, judgment, exhibit B for defendant, writ of possession.

The COURT: Any objection?

Mr. ANTONSANTI: We object to the admission of the document marked, declaration in ejectment, as this declaration calls for a property of eighty cuerdas, which has no relation, or at least it appears from the face of this declaration, it has no connection with the property we are suing for here today, and that same objection will go to each and every one of these documents. The only defense made here is that this court in this suit rendered a judgment excluding him from the eighty acres, and it is up to this defendant to prove that this fifty acres *was* ever litigated.

54

The COURT: They will be admitted temporarily subject to connection; if you will tell me that you will connect them with other evidence to show except by inference that the parcels are identical, I will admit them, but unless you mean to follow it by other evidence to show that these fifty acres were a part of those eighty acres, they will be excluded.

Mr. LANDERS: It seems to me that the fact that this defendant comes and produces the identical deed that he presents here, as a muniment of title, is sufficient.

The COURT: You haven't proved that he introduced it as a muniment of title.

Mr. LANDERS: That is to go to the jury for what it is worth.

The COURT: There is a question that I am charged with the responsibility of, whether you have entitled yourself to make that inference of fact from the identification which you have already produced.

55

Mr. LANDERS: Will you allow me to ask this witness whether or not he offered that deed as evidence of title in that case?

The COURT: That is a highly technical question.

Mr. LANDERS: He knows whether or not he claimed under and by virtue of that deed.

The COURT: You can ask him one question if you want to.

Mr. LANDERS: What is that?

The COURT: The question is this: Did you claim title to a portion of the eighty acres of real estate in Kortright v. Ramos under the deed introduced in evidence?

A. The eighty cuerdas which she claimed was on account of an expediente posesorio——

Mr. LANDERS: That is not an answer to that question.

The COURT: You can ask him this question: In your defense in the case of Kortright v. Ramos, brought in this court in 1901, did you claim by a document of title or by word of mouth that the fifty acres you are now suing for constituted any portion of the eighty acres there involved?

A. The eighty cuerdas were different because those were acquired through an expediente posesorio, by means of an expediente posesorio, and the only proof that she introduced in evidence here was the

copy of that expediente pesesorio. That was all the title which she introduced in evidence.

Q. But what did he introduce?

56 A. I introduced the same copy of that expediente.

Mr. ANTONSANTI: There you are; a different title from this.

The COURT: Anything further?

Mr. LANDERS: That is all I care to ask the witness.

Mr. ANTONSANTI: I move that these documents be stricken from the files.

The COURT: They are not fully received. He has got to connect them.

Witness retires.

57 EDUARDO WOOD, being called as a witness in behalf of the defendant, was duly sworn and testified as follows:

Direct examination by Mr. LANDERS:

Q. What is your name?

A. Eduardo Wood.

Q. What is your business, Mr. Wood.

A. Merchant.

Q. I will ask you whether or not you were administrator of the estate of Eliza Kortright.

A. I was judicial administrator.

Q. As administrator, did you pay into this court, to the order of Mrs. Ramos, the sum of six thousand dollars, and do you remember the exact amount?

A. No, I paid six thousand and odd dollars, but I don't remember the exact amount. I paid it to the Marshal.

Mr. LANDERS: You admit that, that they paid in six thousand dollars and that they recovered eleven acres of land that were turned over to the wife of this plaintiff?

Mr. ANTONSANTI: Yes, sir; that is one of our contentions.

Mr. LANDERS: That is all.

No cross examination.

Witness retires.

58 EDUARDO GIORGETTI, being called as a witness in behalf of the defendant, testified as follows:

Direct examination by Mr. LANDERS.—Interpreted:

Q. What is your name?

A. Eduardo Giorgetti y Fernandez Vangas.

Q. You are acquainted with the plaintiff in this case, Mr. Ramos?

A. I know him.

Q. Are you acquainted with a rustic estate situated in the barrio of Palmas Altas, jurisdiction of Barceloneta, comprising about fifty acres, which he is claiming here?

A. Precisely a fifty acre tract, no.

Q. You are not acquainted with it?
A. Not fifty acres exactly.
Q. Do you know the land recovered by Eliza Kortright in the barrio of Palmas Altas?

The COURT: Hold on, you are going too fast. You have got to prove his knowledge of the lands in the vicinity.

Q. You are acquainted with the lands in the vicinity of Palmas Altas, are you not?
A. Yes, sir.
Q. You have lands yourself in that vicinity?
A. Not precisely in Palmas Altas.

The COURT: Ask him how long he has known that region.
Mr. LANDERS: I shall.

Q. How close to Palmas Altas?
A. Just divided by the Caño de Tiburones.
59 Q. How long have you been acquainted with that vicinity?
A. Since the year 1899.
Q. (Handing the complaint to the witness). I will ask you to read this description and say whether or not you are acquainted with that.

The COURT: Has the land got natural boundaries?
Mr. Landers: We can't locate it.
Mr. ANTONSANTI: We will find it if we get a judgment.
Mr. LANDERS: I know you will try to find it.
Mr. ANTONSANTI: We know where it is.
(The Interpreter translates to the witness into Spanish, the description in the complaint, of the land sued for.)

A. With those boundary lines I don't know.
Q. Do you know the lands in that vicinity?
A. Yes, sir; very well.
Q. I will ask you whether or not you know the rental value of lands in that vicinity.
A. The lands of the ward of Palmas Altas have different values. There are some sandy lands which are close to the sea, and those which are near or close to the Caño are better.
Q. From his knowledge of these lands and his experience up there as a planter, what would you say would be the rental value of a property per cuerda in that vicinity?
A. About six dollars per cuerda.

Mr. LANDERS: That is all.

Cross-examination by Mr. ANTONSANTI:

Q. Mr. Giorgetti, you are connected with the Plazuela Sugar Company, are you not?
A. Yes, sir.
60 Q. Have you any lands leased in the barrio of Palmas Altas, except what you may have leased from The People of Porto Rico?

A. Only in the barrio of Palmas Altas we have got the property which is now held or possessed by The People of Porto Rico.
Q. Then you do not rent any other property there?
A. No, sir; none at all in the barrio of Palmas Altas.
Q. Now tell me, Mr. Giorgetti, what is the least that you pay at your central for the worst kind of cane lands, per acre of cane land.

Mr. LANDERS: I think the question should be confined to that locality.

Q. In any locality, the worst and the cheapest.
A. Not in Palmas Altas; in the district of Barceloneta?
Q. Yes, the cheapest land suitable for producing cane.
A. Between nine and twelve dollars.

Mr. ANTONSANTI: That is all.

The COURT: Why is this worth only six dollars if the cheapest that you pay is nine to twelve dollars?
A. Mr. Antonsanti referred in his question to lands good for cane culture, and this land is not.

Mr. ANTONSANTI: He doesn't know the land.
Mr. LANDERS: He is acquainted with lands in that vicinity.
The COURT: Yes, but one part of the land might be a rich loam and another part sand.
Mr. LANDERS: Well, we would like to know where this land is. If it is a part of the eighty acres, it is a complete defense.
The COURT: The People of Porto Rico are getting money from them.
61 Mr. LANDERS: If Your Honor knows that.
The COURT: I am not testifying. You will have to shoot more with a rifle, Mr. Landers, and scatter less.

Mr. LANDERS: That is all the testimony I have.
Mr. ANTONSANTI: Now I move that these documents be stricken, if Your Honor please.
The COURT: They will be stricken and not received in evidence.
Mr. LANDERS: Note an exception.
The COURT: Certainly.

The eight documents in question were then marked: A, B, C, D, E, F, G, and H, respectively, for the defendant, not admitted.

The COURT: I will also entertain a motion to direct a verdict.
Mr. ANTONSANTI: I was going to make it but I would rather let the matter go to the jury.
Witness retires.

62 *Instructions to the Jury.*

This is an action of ejectment brought by Bonocio Ramos against certain defendants, all of whom, so far as the record shows, have been eliminated excepting The People of Porto Rico. The lands are now leased to the Plazuela Central, as the testimony showed.

The plaintiff claims title under the succession of his mother and introduces in evidence a deed calling for the fifty cuerdas of land which are the basis and subject of this action. It is quite immaterial as to whether or not the land is described with any more particularity. It seems to be described sufficiently in that deed. And in case the plaintiff should be successful here, it would be his business to determine where the land lies and to establish the boundaries from the description.

There has been more or less talk about another action of ejectment that was pending and determined in this court in 1901, and an attempt has been made, by word of mouth and otherwise, although unsuccessful from a documentary point of view, to raise the legal imputation that the fifty acres here sued for constitute a portion of the tract of land that was sued for in 1901. In that case eighty acres were involved, eleven of which were decreed to be the property of the wife of this plaintiff here, and eleven from eighty do not leave fifty according to the arithmetic that I have always followed, but would seem to leave sixty-nine, so that question would weaken any inference of fact, and much more an inference of law.

Here we have a title claimed in a man who shows his documents of title, and who appears to have come into possession if there is such land, in an absolutely regular and legal way. He claims that
63 The People of Porto Rico are occupying that land and renting it, and that it belongs to him, and, in opposition, all The People of Porto Rico can show is that there was a former action in this court involving eighty acres of land, and that, among the exhibits that were attached to the papers and constituting a portion of the papers in that case, was a copy of the deed which the plaintiff introduced in his own behalf here, and they endeavored to bring your minds to the convincing inference that, from the very fact that that deed was one of the exhibits in that case, these fifty acres constituted a portion of the eighty acres. It is for you to judge whether, from evidence of such character, you can believe that contention, or do believe that contention.

I don't believe it is necessary for me to go into any further discussion of the evidence to you, or the law either. The land belongs to this man, by uncontroverted testimony, or else the evidence that was introduced in regard to the inference that it constituted a portion of the eighty acres must be so strong as to become a preponderance of the evidence to you. You, however, are the judges of the fact absolutely. All that I say to you is not even advisory, but simply a statement of how the evidence struck me.

You will retire to your room for deliberation and appoint a foreman.

Mr. ANTONSANTI: May I call Your Honor's attention to one point, that you instruct them how they should arrive at the question of damages.

The COURT: The way you should arrive at the amount of damages is the rental value of the land for the time that it has been
64 withheld, and you must determine from the evidence that has been introduced here, what is the rental value of sugar lands

in that locality. The first witness, Ramos, testified that it is worth twelve dollars an acre a year. Mr. Giorgetti, who is connected with the Plazuela Sugar Central, testified that the least he paid was nine dollars, and that he paid from nine to twelve dollars a year, and it is in evidence, and uncontroverted, that the land in controversy here is leased to the Plazuela Sugar Company. I think that is sufficient, Mr. Antonsanti. You may retire in the custody of the Marshal for your deliberation.

Mr. LANDERS: Please note an exception to the charge.

The jury thereupon retired to consider of their verdict, and later returned into court with a verdict in favor of the plaintiff, and assessing his damages in the sum of six thousand dollars.

Mr. LANDERS: Will Your Honor allow me an exception to the verdict?

The COURT: Oh, yes, indeed.

The end.

65 *Stenographer's Certificate.*

I, Arthur J. Harvey, Official Stenographer of the District Court of the United States for Porto Rico, hereby certify that the foregoing document, consisting of thirty-two typewritten pages, is a true and correct transcript of all the oral testimony offered upon the trial of the case of Bonocio Ramos v. Eduardo Wood, et al., in the District Court of the United States for Porto Rico, on the 22nd day of April, 1912; which said testimony was reported by me in shorthand at the time of said trial and was thereafter by me transcribed from my shorthand notes.

ARTHUR J. HARVEY,
Official Stenographer of the District Court of the United States for Porto Rico.

66 Filed April 22, 1912.

In the District Court of the United States for Porto Rico.

682. Law.

BONOCIO RAMOS
vs.
EDUARDO WOOD, Judicial Administrator for the Estate of Eliza Kortright, et al.

Verdict.

"We, the Jury, find for the Plaintiff and assess his damages in the sum of Six Thousand Dollars and — Cents.

(Signed) ARTURO BRAVO, *Foreman.*"

67 Filed May 11, 1912.

In the District Court of the United States for Porto Rico.

Law. No. —.

BONOCIO RAMOS, Plaintiff,
vs.
PEOPLE OF PORTO RICO, Defendant.

Affidavit on Motion for New Trial.

Enrique Castro Gonzalez, being first duly sworn, on oath deposes and says:

That he is the duly appointed, qualified and acting Chief of the Bureau of Public Lands of Porto Rico, and as such is attached to the Office of the Commissioner of the Interior of Porto Rico; that on the 2nd day of May, 1912, affiant proceeded to Palmas Atlas Ward, in the jurisdiction of Barceloneta, for the purpose of ascertaining the location of a certain tract of land of 50-cuerdas which Bonocio Ramos sued for and recovered in that certain action of ejectment in the District Court of the United States entitled "Bonocio Ramos vs. People of Porto Rico, No. 682, Law"; that upon arriving at the place where the property of 80-cuerdas which was acquired by The People of Porto Rico through the abintestate of Eliza Kortright is located—which property was adjudged and decreed in favor of the said Eliza Kortright by the District Court of the United States for the District of Porto Rico in the month of November, 1901, in the case of Eliza Kortright vs. Bonocio Ramos y Caballero—affiant interviewed Manuel Dominguez, who is one of the present adjoining property owners of said property on the West;

68 that affiant was informed by said Manuel Dominguez that he acquired the land he now owns and occupies from his sister, Sotera Dominguez; that said Sotera Dominguez was the wife of Antonio Milasio; that the lands owned by him, as well as some of those adjoining his property, before being possessed by Sotera Dominguez were owned by one Yuane Eliberto; Dominguez also informed affiant that the lands situated on the South belong to Maria Angela Fernandez, wife of Bonocio Ramos Caballero, and that Pedro José Fernandez was the father of Maria Angela, Marcial and José Antonio Fernandez, the adjoining property owner to the East of the tract of 80-cuerdas.

Immediately after procuring this information, affiant interviewed Bonocio Ramos Caballero, and upon questioning him as to which lands belonged to Carmen Paña, as appears from the description of the property of 50-cuerdas which he claims in the suit of Bonocio Ramos vs. People of Porto Rico, Ramos accompanied affiant to the place where the same is situated and affiant found that said tract is situated between the Caño de Tiburones on the South and the lands of Sotera Dominguez de Milasio on the North; Ramos in-

formed affiant that these lands belong at present to his wife, Maria Angela Fernandez, as well as a small parcel on this same boundary-line which is bounded by the sea; Ramos also informed affiant that the lands situated to the East of the 80-cuerdas, or, namely, those situated to the East of the property upon which this investigation was being made, belonged to his wife, Maria Angela Fernandez, where his said dwelling house is now located.

As may clearly be seen from the map or sketch accompanying this affidavit and made a part hereof, the property of 50-cuerdas claimed at present by Bonocio Ramos is the same property of 80-cuerdas acquired by the People of Porto Rico through the abintestate of Eliza Kortright, and which the latter acquired by judgment and decree rendered in her favor by the District Court of the United States for the District of Porto Rico in November, 1901.

69 The boundaries set out in the Amended Complaint of the description of the property of 50-cuerdas on the West are: Carmen Peña and Antonio Milasio. Those of the property of 80-cuerdas are: Maria Angela Fernandez and Sotera Dominguez. They are practically the same, since the lands of Carmen Peña are those belonging to Maria Angela Fernandez at present, according to Bonocio Ramos's own statement; those of Antonio Milasio are lands of Sotera Dominguez, who was Milasio's wife.

The boundaries of the 50-cuerdas to the East are lands of Pedro José Fernandez and the Caño de Tiburones; and those of the 80-cuerdas on this same cardinal point are Maria Angela, Marcial and José Antonio Fernandez and the Caño de Tiburones. Pedro José Fernandez was the father of Maria Angela, Marcial and José Antonio Fernandez, so that the boundaries are practically the same. On the South both properties are bounded by the Caño de Tiburones.

The boundary of the 50-cuerdas on the North is the sea, and that of the 80-cuerdas is with Maria Angela, Marcial and José Antonio Fernandez, it being apparent that in the property of 50-cuerdas no mention is made of its being bounded by Maria Angela, Marcial and José Antonio Fernandez, and in the property of 80-cuerdas no mention is made of its being bounded by the sea, it being absolutely certain that this property is bounded on the North by the sea as well as by the land of Fernandez.

The land shown to affiant by Bonocio Ramos, which he claims to be that of the 50-cuerdas described in his Amended Complaint, is the same land which Balseiro & Giorgetti actually hold under lease by virtue of a public instrument executed by Elisa Kortright before Notary Gabriel Guerra y Acosta under date of November 28, 1904, and which contract of lease was renewed at maturity by the Judicial-Administrator of the estate of decedent, Miss Kortright.

70 That from the investigation which affiant made of the said property, affiant is positive that the tract of 50-cuerdas as described in the Amended Complaint filed by said Ramos vs. People of Porto Rico is part of the same 80-cuerdas which was decreed to Eliza Kortright in November, 1901, in the case of Elisa Kortright vs. Bonocio Ramos.

(Signed) ENRIQUE CASTRO GONZALEZ.

Subscribed and sworn to before me this 11th day of May, A. D. 1912.

(Signed) RAFAEL GUILLERMETY, *Clerk.*

71 Filed May 11th, 1912.

In the District Court of the United States for Porto Rico.

Law. No. —.

BONOCIO RAMOS, Plaintiff,

vs.

PEOPLE OF PORTO RICO, Defendant.

Motion for New Trial.

Comes now the Defendant herein, The People of Porto Rico, by its attorney, Wolcott H. Pitkin, Jr., Attorney-General of Porto Rico, and moves the Court for a new trial of said cause on the following grounds, to-wit:

I.

That the Court has not jurisdiction of this Defendant, because for all necessary purposes of government this Defendant is a sovereign and not liable to suit without its consent.

II.

That the Court has no jurisdiction of this Defendant, because this is a suit between Plaintiff, a citizen of Porto Rico, and The People of Porto Rico, a body politic and corporate organized under an Act of Congress—both Plaintiff and Defendant being citizens of Porto Rico within the meaning of the Act of Congress conferring jurisdiction upon this Court, and therefore this Court is without jurisdiction.

72 III.

Insufficiency of the evidence to sustain the verdict.

IV.

That said verdict is contrary to the evidence and the weight of the evidence.

V.

That said verdict is contrary to law.

VI.

Accident and surprise which ordinary prudence could not have guarded against.

VII.

Error in law occurring at the trial and duly excepted to by Defendant.

VIII.

Newly discovered evidence which it was impossible to have presented at the trial, notwithstanding due diligence was used in the preparation of said cause and every issue openly presented by pleadings fully met.

IX.

Newly discovered evidence which by all proper diligence it was impossible to have secured.

X.

These different grounds are supported by the affidavits hereto attached, or to be hereinafter filed by leave of Court in support of the grounds herein set forth and by analysis of the testimony to be presented by brief.

Wherefore, Defendant moves this Hon. Court for a new trial of said cause.

(Signed) WOLCOTT H. PITKIN, JR.,
Attorney General of Porto Rico.

73 Filed May 13th, 1912.

In the District Court of the United States for Porto Rico.

Law. No. 682.

BONOCIO RAMOS, Plaintiff,
vs.
THE PEOPLE OF PORTO RICO, Defendant.

Affidavit on Motion for New Trial.

W. N. Landers, being first duly sworn, on oath deposes and says: That he was attorney of record for the defendant and The People of Porto Rico in the above entitled cause, and as such represented The People of Porto Rico upon the trial thereof.

He further alleges, on information and belief, that, on June 12, 1901, Elisa Kortright y Kenney sued Bonocio Ramos in the District Court of the United States for Porto Rico, and alleged that she was the owner of an estate consisting of a certain tract of land with two houses and other improvements thereon, described and situated as follows:

"A rural estate, situated in the Barrio of Palmas Atlas, District of Barceloneta, Porto Rico, composed of eighty (80) cuerdas, equiva-

lent to 31 hectares, 44 ares and 31 centiares, of land, devoted to pasture and agricultural purposes, bounded on the west by the lands of Francisco and Sotera Dominguez and lands of Doña Maria Angela Fernandez; on the east by the lands of the aforesaid Maria Angela Fernandez and José Antonio Fernandez and by the Caño de Tiburones; on the north by the lands of the said Maria Angela and José Antonio Fernandez; and on the south by the said Caño de Tiburones."

74 That the defendant in the said action was duly served with process and appeared and defended the action. The case was tried at the October Term, 1901, of said Court, to wit: on the 2nd day of November, 1901, and, on that date, the jury, duly and legally empaneled, returned a verdict in favor of plaintiff, Elisa Kortright y Kenney, and found the defendant, Bonocio Ramos, guilty of unlawfully withholding from her the premises above described. The Court thereupon ordered and adjudged that plaintiff in that suit, Elisa Kortright, recover from the said Bonocio Ramos the possession of the said premises, in accordance with the verdict of the jury, and from that judgment no appeal was taken and said judgment is still in force and effect. Soon after the rendition of said verdict and judgment, the title of the said Elisa Kortright y Kenney to the said estate was duly recorded in the Registry of Property of Arecibo at Folio 173, over, Vol. 12, of Barceloneta, Finca 687, 2nd inscription. In accordance with the said judgment of the Court, a writ of possession was issued and the said Elisa Kortright y Kenney placed in possession of the said 80 cuerdas of land above described.

Notwithstanding the said judgment of the Court and the possession which had been given thereunder to the said Elisa Kortright y Kenney, the said Ramos continued to set up some kind of a claim to said land. Thereupon, on November 3, 1903, Elisa Kortright y Kenney filed a bill-in-equity in the United States Court praying for an injunction against the said Ramos, alleging that he was cutting cane which had grown on the finca in "Palmas Altas." Ramos filed an answer, in which he disclaimed ownership to any part of the property and disclosed that his wife claimed title to 11 cuerdas of the 80-cuerda tract above described. Thereupon the Court made an order requiring the wife of Ramos to be made a party defendant to the suit. Ramos' wife appeared and answered the bill, and in that answer alleged ownership of a parcel of

75 11 cuerdas, being a part of the 80 cuerdas recovered by Elisa Kortright y Kenney from Ramos in 1901. On the final hearing of the matter, the Court found that the 11 cuerdas claimed by Mrs. Ramos did, in fact, belong to her, and she was duly put into possession thereof, and damages in the amount of $6,000 were awarded and paid to her.

On November 12, 1909, Bonocio Ramos instituted a suit in ejectment in the District Court of the United States for Porto Rico against Eduardo Wood, Judicial Administrator of the estate of Elisa Kortright y Kenney, who had died some time prior thereto. Ramos alleged in that complaint that he was the owner and entitled to the

possession of a certain tract of land, situated and described as follows:

"A tract of land situated in the Barrio of "Palmas Atlas," Municipality of Barceloneta, Porto Rico, containing 80 cuerdas of land, bounded on the north by the Atlantic Ocean and lands of José Antonio Fernandez; on the east by lands of Maria Angela Fernandez and the Caño de Tiburones; on the south by the said Caño de Tiburones; and on the west by lands of Francisco and Sotera Dominguez and those of Maria Anfela Fernandez."

the said description being identical in every respect with the description of the land adjudged to Elisa Kortright y Kenney on November 2, 1901, as above set forth.

On November 19, 1909, the attorney for the Administrator of the estate of Elisa Kortright y Kenney moved the Court that The People of Porto Rico be made a party defendant in said action for the reason that The People of Porto Rico had been declared by the District Court of San Juan the sole heir of Elisa Kortright, deceased, she having died intestate and without leaving any legal heirs.

That, on December 15, 1910, the said Bonocio Ramos filed an amended complaint in which he amended the description of the property claimed by him, and described the premises to be
76 as follows:

That, on December 15 1910, the said Bonocio Ramos filed an amended complaint in which he amended the description of the property claimed by him, and described the premises to be as follows:

"A rural estate situated in the Barrio of 'Palmas Atlas,' Municipality of Marceloneta, known by the name of 'Llanadas,' containing an area of 50 cuerdas of land (of which 20 are lowlands and the balance — lands), bounded on the east by lands of Pedro José Fernandez; on the west by those of Carmen Peña and Antonio Milasio: on the south by the Caño de Tiburones; and on the north by the sea."

To this amended complaint the defendant, The People of Porto Rico, filed an answer alleging that the land described in the said amended complaint was the same land that had been adjudged to Elisa Kortright y Kenney in the case of Elisa Kortright y Kenney vs. Bonocio Ramos, decided in November, 1901, and therefore the question of the ownership of the land was res judicata as between the parties to the action of Bonocio Ramos vs. The People of Porto Rico.

That on the 17th day of April, 1912, the case of Bonocio Ramos vs. The People of Porto Rico, No. 682 Law, was called, and the same was set down for trial for Tuesday, April 23, 1912, to follow the case set for trial on Monday, April 22, 1912; that after the case had been so set down for trial, affiant used every endeavor to secure testimony in order to make the proper defense in said action; that affiant inquired of competent persons, familiar with the Barrio of Palmas Atlas, and none of the said persons knew of or had ever heard of the property described in plaintiff's amended complaint; that

the said persons with whom affiant talked were well acquainted with the tract of 80 cuerdas recovered by Elisa Kortright y Kenney in the year 1901, as above set forth, but were unable to state,
77 and did not know, whether or not the tract described by plaintiff in his amended complaint was a part or parcel of the said 80-cuerda tract recovered from Ramos in 1901 by Elisa Kortright y Kenney; that affiant requested the Department of the Interior to furnish him with maps and other data relating to the land so described; that at the opening of Court on April 22, 1912, the case set for trial on that date was dismissed, and the affiant was thereupon forced, by the order of the said Court, to go to trial in the above entitled action on April 22, 1912, instead of April 23, 1912, for which date the said action had previously been set; that at that time affiant had not been able to procure from the Department of the Interior the maps and information requested as above set forth; that at the trial of said case the attorney for the plaintiff, in his opening address to the jury, stated that the tract of land which he was now suing for, as described in the amended complaint, was no part of the 80-cuerda tract recovered by Elisa Kortright y Kenney from Ramos in the year 1901, but that the same was an entirely different and distinct tract and separated from the original 80-cuerda tract; that the plaintiff, Bonocio Ramos, while on the witness stand and testifying in said action, testified that the tract of land which he was seeking to recover in this action consisted of 50 cuerdas, as described in *his* amended complaint, and was no part of the 80-cuerda tract recovered from him by Elisa Kortright in the year 1901, but that the same was an entirely distinct tract of land, separated from the 80-cuerda tract by a parcel of land belonging to his wife; that the jury in the said case returned a verdict in favor of the said Ramos, upon which
78 the Court duly entered a judgment adjudging that the title to the tract described in the said amended complaint was in the said Ramos, awarding to the said Ramos, against The People of Porto Rico, the sum of $6,000 as damages.

That, since the trial of the above entitled action, affiant has received the information previously requested from the said Department of the Interior, as above set forth, which shows conclusively that the said tract of land described in the said amended complaint is the same land (with the exception of the tract of eleven cuerdas previously awarded to Mrs. Ramos, as is more fully stated above in this affiadvit) as the tract of 80 cuerdas described and set forth in the judgment rendered on November 2, 1901, adjudging the title to the said tract of land to be in the said Elisa Kortright y Kenney, from whom The People of Porto Rico derives its title; that this information is of such a nature that the affiant, if given an opportunity, can now establish this fact beyond all doubt; that if this information had been in the possession of the affiant on the morning of the said 22nd day of April, 1912, at which time he was forced to go to trial in the above entitled case,—as is more fully set forth above,—affiant would at that time have been able to establish that the tract of land claimed by the plaintiff in his amended complaint was

the same tract the title to which had previously been decreed to be in the predecessor of The People of Porto Rico.

Wherefore, affiant respectfully prays the Court to grant a new trial in the above entitled action.

(Signed) W. N. LANDERS.

Subscribed and sworn to before me this 13th day of May, 1912.

(Signed) RAFAEL GUILLERMETY,
Clerk Dist. Court of U. S. for P. R.,
By N. V. COLBURN, *Deputy.*

79 Journal Entry, May 14, 1912.

In the District Court of the United States for Porto Rico.

Law.

BONOCIO RAMOS
vs.
EDUARDO WOOD, Judicial Administrator for the Estate of Eliza Kortright.

The hearing of all matters pending in the above entitled cause, are set for Saturday, May 18th, 1912, at 10 o'clock A. M.

80 Journal Entry, May 18, 1912.

In the District Court of the United States for Porto Rico.

Law.

BONOCIO RAMOS
vs.
THE PEOPLE OF PORTO RICO, Formerly Eduardo Wood, Judicial Administrator for the Estate of Eliza Kortright.

The petition for a new trial filed by the defendants in the above entitled cause, is heard by the Court and the same is held in abeyance for further consideration.

81 Filed May 21, 1912.

In the District Court of the United States for Porto Rico.

No. —.

BONOCIO RAMOS
vs.
EDWARD WOOD, Formerly Judicial Administrator of the Estate of Eliza Kortright, at Present The People of Porto Rico.

Memorandum on Behalf of Plaintiff in Opposition to the Granting of a New Trial.

The present defendant The People of Porto-Rico has filed a motion for a new trial in this case, and although the same is based on ten different grounds, we will however, only dwell upon two of the said motives assigned by the defendant.

First. The defendant, attacks the jurisdiction of this Court, on the ground that the People of Porto Rico, being a sovereign is not liable to suit without its consent. Although lack of time does not permit our going into this theory as deeply as we would like, we think, nevertheless sufficient to say that under Section seven (7) of the Organic Act of Porto-Rico, it was plainly established: "that The People of Porto-Rico, was invested with the power to sue and be sued. And we further, call the attention of the Court to the fact, that this suit was originally filed against Edward Wood, who was the judicial administrator for the Estate of Eliza Kortright, both of whom were subjects of Great Britain and Ireland, and that in any event the People of Porto Rico is a mere nominal defendant,
82 inasmuch as it can never respond to this plaintiff in this action with any other property than that inherited and obtained from the Kortright estate.

Passing to the other ground alleged by defendant and to judge from the affidavits, is really the only ground on which, the defendant relies to wit: newly discovered evidence:

This plaintiff states that this Court should not grant a new trial on this ground, for it is evident from the affidavits filed, that the evidence alleged to be newly discovered is simply cumulative; it all tends to show that the property of eighty cuerdas and that containing the fifty cuerdas is the same tract, and whereas by a simple reading of the answer in this case, one is readily convinced that this was one of defendant's chief defenses, and that to substantiate this defense, the defendant produced witnesses at the trial and specially the witness Eduardo Georgetti, one of the largest property owners in Barceloneta.

A new trial will not be granted for newly discovered testimony which is cumulative, was easily obtainable at the first trial; and is manifestly insufficient to change the result.

Fluit etc. vs. Marine Inc. Co. 71 Fed. Rep. 210.

We contend that the evidence as shown by the affidavits filed in support of the motion is substantially, the same as produced at the hearing by the witness Eduardo Georgetti and that said affidavits do not disclose any new matter not brought to issue at the former trial, both by the pleadings and the evidence.

Where it appears from the affidavits filed upon a motion for a new trial on the ground of newly discovered evidence, that the new evidence proposed is substantially the same evidence as that introduced at the trial, no new trial will be granted.

Fuller vs. Harris, 29 Fed. 814.

83 Certainly the defendant by the affidavits presented only shows that the evidence presented to be submitted is only contradictory and we submit that they are entirely insufficient in law to support the motion for a new trial.

Newly discovered evidence which is merely cumulative or merely contradictory of other evidence is not ground for a new trial.

68 Fed. Rep. 827. Chandler vs. Thompson 30 Fed. 44.

We submit to your honor, therefore, that this case has been pending before this Court for several years, that the same has been set for hearing at several terms of this Court, and the same has been postponed at the request of the defendant, and that the defendant has not shown any valid reason for not having prepared the evidence alleged at this late time to be of a newly discovered nature, and which we submit even considering the statements contained in the bare affidavits to be true we fail to see how evidence of this character could change the results of the verdict at a subsequent trial.

We must call the attention of the Court to the affidavits of the witness Enrique Castro Gonzalez, who is the government surveyor, accompanying a plan; which in law is entirely immeterial and incompetent evidence, it being all hearsay; and the same applies to the affidavit of W. N. Landers, Esq., and as to the affidavit of the witness Marcial Fernandez, we submit to your honor that this same witness appeared at the trial of this cause and testified on behalf of plaintiff, and neverthelers the defendant did not avail itself of the opportunity to question him on points now presented in the affidavit.

We submit to the Court that this plaintiff has waited for his day in Court for four years, that after a fair, but not speedy trial,
84 justice has been done him, and that in the absence of good cause to be shown the judgment in this case should stand and the motion for a new trial denied.

Respectfully submitted,

(Signed) FRANK ANTONSANTI,
Attorney for Bonocio Ramos.

85 Journal Entry, June 15, 1912.

In the District Court of the United States for Porto Rico.

BONOCIO RAMOS
vs.
EDUARDO WOOD, Judicial Administrator for the Estate of Elisa Kortright & The People of Porto Rico.

The motion for a new trial filed by the defendant in the above entitled cause, which was held in abeyance for further consideration, is now overruled according to law, to which ruling the defendant duly objects and excepts.

86 Filed June 18, 1912.

In the District Court of the United States for Porto Rico.

BONOCIO RAMOS
vs.
PEOPLE OF PORTO-RICO.

Ejectment.

The Clerk of the above court:

You will please issue a writ of Execution for the amount of the judgment rendered in the above entitled cause, with interest and cost together with a writ of possession for the restitution of the lands sued for.

(Signed) FRANK ANTONSANTI,
Attorney for Plaintiff.

87 In the District Court of the United States for the District of Porto Rico.

Law. No. 682.

BONOCIO RAMOS, Plaintiff-Respondent,
vs.
THE PEOPLE OF PORTO RICO, Defendant-Appellant.

Petition for a Writ of Error and Supersedes.

To the Honorable Paul Charlton, District Judge for the said District of Porto Rico:

The People of Porto Rico, defendant in the above entitled cause, feeling itself aggrieved by the verdict of the jury, and the judgment

entered on the 22nd day of April, 1912, comes now by Wolcott H. Pitkin, Jr., its Attorney, and petitions said Court for an order allowing said Defendant to prosecute a writ of error to the Honorable Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and that all further proceedings in this Court be suspended and stayed until the determination of said writ of error by the United States Supreme Court.

Your petitioner further states that the amount involved in this proceedings exceeds, exclusive of costs, the sum or value of five thousands dollars.

And your petitioner will ever pray.

(Signed) WOLCOTT H. PITKIN,
Attorney General of Porto Rico and
Attorney for the Defendant, Appellant.

88 Filed June 20, 1912.

In the District Court of the United States for Porto Rico.

Law. No. 682.

BONOCIO RAMOS, Plaintiff-Respondent,
against
THE PEOPLE OF PORTO RICO, Defendant-Appealant.

In the Matter of the Petition of THE PEOPLE OF PORTO RICO, Appellant.

Assignments of Errors.

Afterwards, to wit, on the twentieth day of June, in the year of our Lord, nineteen hundred and twelve, comes The People of Porto Rico by Wolcott H. Pitkin, Jr., Attorney General of Porto Rico and Appellant's Attorney, and says: that in the record, proceedings, decision and final judgment in the above entitled matter there is manifest error, in this, to wit:

1. The Court erred in overruling the demurrer to the complaint filed in the above entitled action.

2. The Court erred in entertaining jurisdiction of the above entitled cause, because for all necessary purposes of government, the Defendant The People of Porto Rico, is a sovereign- and not liable to suit without its consent.

3. The Court erred in entertaining jurisdiction in the above entitled cause because this is a suit between Plaintiff—a citizen of Porto Rico—and The People of Porto Rico, a body politic and corporate, organized under an act of Congress; both Plaintiff and Defendant being citizens of Porto Rico within the meaning of the Act of Congress conferring jurisdiction upon the District Court of the United States for Porto Rico.

4. The Court erred in sustaining the objection of counsel for Plaintiff to the introduction in evidence of the record, files and proceedings in the case of Eliza Kortright y Kenney vs. Bonocio Ramos, No. 65 Law.

89 5. The Court erred in sustaining the objection of the attorney for the Plaintiff to the question propounded on behalf of the defendant on the cross-examination of the witness Bonocio Ramos as to whether or not, upon the trial of the case of Eliza Kortright y Kenney vs. Bonocio Ramos, No. 65 Law, in nineteen hundred and one, he did not introduce as his muniment of title the deed marked Exhibit "A" which he now introduces as his title of ownership to the land involved in this action.

6. The Court erred in holding that the Plaintiff had stated in his complaint such a cause of action as entitles him to the relief prayed for therein.

7. The Court *held* in entering a judgment against the Defendant.

Wherefore, plaintiff in error prays that the judgment in said case may be reversed and a new trial be granted.

WOLCOTT H. PITKIN,
Attorney General of Porto Rico, Attorney for Plaintiff in Error.

90 Filed June 20, 1912.

In the District Court of the United States for Porto Rico.

At a Stated Term of the District Court of the United States for Porto Rico, Held at the Court-House at the City of San Juan, within said District, on the 20th Day of June, 1912.

Present: The Honorable Paul Charlton, District Judge for the said District Court of Porto Rico.

Law. No. 682.

BONOCIO RAMOS, Plaintiff-Respondent,
vs.
THE PEOPLE OF PORTO RICO, Defendant-Appellant.

Order for Writ of Error.

On motion of Walcott H. Pitkin, Jr., Attorney General of Porto Rico and Attorney for Defendant, and upon filing a petition for a writ of error and an assignment of errors,

It is ordered that a writ of error be and is hereby allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that the amount of the bond on said writ of error be and hereby is fixed at Five Hundred dollars, the same to act as a supersedeas bond and also a bond for costs; and that the Clerk of the United States District Court for Porto Rico is hereby directed to accept the certified check of the Treasurer of Porto Rico

in the sum of Five Hundred dollars, in lieu of a surety or personal bond.

(Signed) PAUL CHARLTON,
Judge of the District Court of the United States for Porto Rico.

91 Filed June 20th, 1912.

In the District Court of the United States for Porto Rico.

Law. No. 682.

BONOCIO RAMOS, Plaintiff-Respondent,
vs.
THE PEOPLE OF PORTO RICO, Defendant-Appellant.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judge of the District Court of the United States for the District of Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court of the United States for Porto Rico, before you, between Bonocio Ramos, Plaintiff, and The People of Porto Rico, Defendant, a manifest error hath happened, to the great damage of the said defendant as is said and appears by the petition herein.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ,
92 so that you have the same in the said Supreme Court at Washington, within sixty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 20th day of June, in the year of our Lord one thousand nine hundred and twelve.

(Signed) RAFAEL GUILLERMETY,
Clerk of the District Court of the United States for Porto Rico.

Allowed by:
(Signed) PAUL CHARLTON,
Judge of the District Court of the United States for Porto Rico.

This June 20th, 1912.

7—390

93 In the District Court of the United States for Porto Rico.

Law. No. 682.

BONOCIO RAMOS, Plaintiff-Respondent,
vs.
THE PEOPLE OF PORTO RICO, Defendant-Appellant.

Citation.

UNITED STATES OF AMERICA, ss:

The President of the United States to Bonocio Ramos, Plaintiff-Respondent, and Frank Antonsanti, his Attorney of Record, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within sixty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the District Court of the United States for the District of Porto Rico, from a final judgment filed and entered on the 22nd day of April, 1912, in that certain suit at Law No. 682, wherein The People of Porto Rico is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Paul Charlton, Judge of the District Court of the United States for Porto Rico, this 20th day of
94 June, in the year of our Lord one thousand nine hundred and twelve.

(Signed) PAUL CHARLTON,
Judge of the District Court of the United States for Porto Rico.

95 Filed June 24th, 1912.

In the District Court of the United States for Porto Rico.

BONOCIO RAMOS
vs.
THE PEOPLE OF PORTO RICO.

Comes now the plaintiff herein, by his Attorney and moves this Honorable Court, for an order increasing the amount of the appeal bond heretofore exacted from the People of Porto Rico for the following reason to wit:

1st. Because the amount of five hundred dollars heretofore fixed is wholly inadequate and insufficient to serve as a supersedeas and also a bond for costs.

Wherefore the plaintiff prays that the supersedeas and cost bond be fixed by this Honorable Court in a sum not less that twelve thousand dollars.

(Signed) FRANK ANTONSANTI,
Attorney for Plaintiff.

96 Journal Entry, June 26, 1912.

In the District Court of the United States for Porto Rico.

Law.

BONOCIO RAMOS
vs.
THE PEOPLE OF PORTO RICO.

Upon motion of Frank Antonsanti, Esq., the petition for the increase of the amount of bond given in the above entitled cause, is hereby withdrawn, with consent of the court.

97 Filed July 5th, 1912.

In the District Court of the United States for Porto Rico.

No. 682. Law.

BONOCIO RAMOS
vs.
THE PEOPLE OF PORTO RICO, as Heirs to the Estate of Elisa Kortright.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

The President of the United States of America, Greetings, to the Marshal of the District Court of the United States for Porto Rico.

Whereas, on the 22nd day of April A. D. 1912, Bonocio Ramos, as Plaintiff, recovered judgment in the aforesaid District Court of the United States for Porto Rico against The People of Porto Rico, as Defendant for the possession of certain premises in said judgment, and hereinafter more particularly described and also the sum of Six Thousand Dollars ($6,000.00) damages, with interest thereon, at 6% from April 22nd 1912, until paid and also for the sum of Thirty-four Dollars and Thirty Cents ($34.30) costs of this suit, as appears to us of record.

Now therefore, you the said United States Marshal are hereby commanded and required to deliver to the said Plaintiff Bonocio Ramos, the possession of the land and premises in said judgment, described as follows, to wit:

"A rustic estate situated in the barrio of Palmas Altas, municipality of Barceloneta, known by the name of "Llanadas" containing an area of fifty (50) cuerdas of land of which twenty are low
98 lands and the balance being sloping lands, bounded on the East by lands of Pedro Jose Fernandez; on the West by those of Carmen Peña and Antonio Milasio; on the South by the Caño de Tiburones and on the North by the Sea.

And whereas, the sum of Six Thousand Dollars ($6,000.00) damages, and Thirty-four dollars and Thirty-cents ($34.30) costs, are now (at the date of this writ) actually due on said Judgment; You, the said United States Marshal are further required to make the said sums due on the said judgment, for damages and costs as against the defendant, The People of Porto Rico and Two Dollars and Thirty-five cents ($2.35) and all other accruing costs as against the same to satisfy the said Judgment, out of the personal property of said Judgment debtor; or if sufficient personal property of said judgment debtor cannot be found, then out of the real property in your district, belonging to said defendant, on the day whereon the said Judgment was entered or any time thereafter; and make return of this writ within Sixty days after your receipt thereof.

Witness, The Honorable Paul Charlton, judge of said Court and the seal thereof, at San Juan, this 19th day of June, A. D. 1912.

Attest:

[SEAL.] (Signed) RAFAEL GUILLERMETY,
Clerk Dist. Court of U. S. for P R.,

(Signed) By L. A. GROSS, *Deputy Clerk.*

Filed July 16, 1912.

99 In the District Court of the United States for Porto Rico.

This agreement made this — day of July, 1912, between Bonocio Ramos, of Barceloneta, P. R., of the first part, and Frank Antonsanti, Attorney of Law, of San Juan, P. R., as party of the second part.

Whereas said party of the first part, on the — day of —— A. D. 1912, recovered a judgment on the District Court of the United States for Porto-Rico against the People of Porto-Rico, as heir of the estate of Eliza Kortright, for the restitution of a tract of land containing fifty cuerdas situated in the barrio of Palmas Altas, of Barceloneta, P. R., and for six thousand dollars as damages, as more fully appears from the records of the said Court.

Now therefore, the party of the first part, in consideration of the legal services rendered by the party of the second part, by these presents, does assign, transfer and set over unto the said party of the second part, and his assigns, a one half interest in the land covered by said judgment, and a like one half interest in all sums of money covered thereby including interest on the said six thousand dollars and any damages that may accrue since the rendering of said judgment.

Witness our hands this 12th day of July 1912.
(Signed) BONOCIO RAMOS.
(Signed) FRANK ANTONSANTI.

100 In the District Court of the United States for Porto Rico.

Law. No. 682.

BONOCIO RAMOS, Plaintiff-Respondent,
vs.
THE PEOPLE OF PORTO RICO, Defendant-Appellant.

Affidavit.

John A. Wilson, being duly sworn deposes and says: that he is the Commissioner of the Interior of Porto Rico; that he is acquainted with the proceedings heretofore had in the above entitled action and that he knows that the amount involved therein, exclusive of costs, exceeds the sum or value of five thousand dollars.
(Signed) JOHN A. WILSON,
Commissioner of the Interior.

Sworn to before me this 20th day of June, 1912.

[Seal U. S. District Court.]

(Signed) RAFAEL GUILLERMETY,
Clerk of the District Court of the United States for Porto Rico,
By N. B. COLBURN, *Deputy.*

101 In the District Court of the United States for Porto Rico.

BONOCIOS RAMOS, Plaintiff,
vs.
THE PEOPLE OF PORTO RICO, Defendant.

UNITED STATES OF AMERICA,
Island of Porto Rico, ss:

Affidavit.

I, Marcial Ferrandis, known as Marcial Fernández, fifty four years of age, married, a resident of San Juan and a native of Barceloneta, P. R. a sailor by occupation, under oath depose:

That I have lived in the "Palma Altas" ward in Barceloneta since I was born up to about ten years ago, and that I know all the fincas in said barrio.

That he knows a parcel of land situate in the "Palmas Altas" ward, in the Municipality of Barceloneta, of low lands which is

bounded on the East by lands of Pedro José Fernández; on the West by lands of Carmen Peña and Antonio Milasio; on the South by the "Caña de Tiburones" and on the North by the sea.

That this parcel of land was owned by Bonocio Ramos for a number of years, he having had some litigation in the year 1901 with Elisa Kortright about said parcel of land, but declarant *does* is ignorant of the outcome of such litigation.

That Pedro José Fernandez was the father of María Angela Fernandez, José Antonio Fernandez and of deponent. That María Angela Fernandez is Bonocio Ramos' wife.

102 That the parcel of land to the East of the property described, which belonged to Pedro José Fernandez, became the property of María Angela Fernandez, José Antonio Fernandez and deponent. The parcel of land to the West of the property, which belonged to Carmen Peña is at present owned by María Angela Fernandez, and the parcel of land also to the West of the property in question, and which belonged to Antonio Milasio and Sotera Dominguez, is at present owned by Manuel Dominguez and María Angela Fernandez. That deponent is Bonocio Ramos' brother-in-law.

(Sgd.) MARCIAL FERNANDEZ.

Subscribed and sworn to before me by Marcial Fernandis known as Marcial Fernandez, fifty four years of age, married, sailor, a resident of San Juan, who is personally known to me, this 17th day of May, 1912.

[SEAL.] (Sgd.) RAFAEL GUILLERMETY.

103 In the District Court of the United States for Porto Rico.

BONOCIO RAMOS, Plaintiff,
vs.
THE PEOPLE OF PORTO RICO, Defendant.

Fernando Suria Chaves, fifty years of age, married, resident of Barceloneta and justice of the peace of this town, under oath deposes and says:

That he has lived continually in the town of Barceloneta and knows all the properties of the jurisdiction. That he has a perfect knowledge of the property of eighty cuerdas situated in the barrio "Palmas Altas," which was the object of litigation between Elisa Kortright and Bonocio Ramos, on or about the year 1901, because he was called as a witness for Bonocio Ramos. That the property was adjudged to Elisa Kortright by virtue of said action, and that a few days ago, deponent was requested by Bonocio Ramos to appear as a witness before the Federal Court, in the action he has now instituted against the People of Porto Rico for the recovery of a property of fifty cuerdas. Deponent knows of his own knowledge that said property of fifty cuerdas is part of theproperty of eighty — delivered to Elisa Kortright in the year 1901 and so informed Mr.

Ramos, stating that if he was questioned as to this point by the Court he would have to tell the truth, namely that in this action he (Ramos) is claiming a part of the finca which was the object of the former litigation.

The property claimed by Ramos is bounded on the West by María Angela Fernandez, Enrique Barnés, Manuel Dominguez and María Angela Fernandez. The lands of María Angela Fernandez,
104 Enrique Barnés and Manuel Dominguez that bound the property claimed by Ramos on the West in direction leading from North to South, were formerly the property of Sotera Dominguez and of Antonio Milasio, and that deponent was personally acquainted with these parties.

The other boundary on the West is with Maria Angela Fernandez who is the wife of Bonocio Ramos and this portion of land was delivered to Maria Angela Fernandez by order of the Federal Court as part of the eleven cuerdas claimed by Bonocio Ramos in behalf of his wife. Carmen Peña was formerly the owner of this land.

On the East, the property in litigation is bounded by a parcel of land of María Angela Fernandez, whereat is situated her dwelling-house. This parcel, together with the portion hereinabove mentioned were delivered to María Angela Fernandez; the one formerly mentioned in its totality and as regards the parcel situated to the East, only a part thereof, situate to the southern extremity of the finca. Both parcels were delivered to her to cover the eleven cuerdas claimed by her. This parcel situated to the East of the property claimed by Ramos and which is at present the property of María Angela Fernandez, formerly belonged to Pedro José Fernandez. María Angela Fernandez, Marcial Fernandez and José Antonio Fernandez are sons of Pedro José Fernandez.

The Property is bounded on the North by the sea and on the South with the "Caño de Tiburones."

(Sgd.) F. S. SURIA.

Affidavit No. 2.

Sworn to and subscribed before me by Fernando Suria Chaves, of age, married, resident and justice of the pea-e of Barceloneta, who is personally known to me, this 15th day of May, 1912.

(Sgd.) ENRIQUE LLOREDA,
District Judge of Arecibo, P. R.

105 In the District Court of the United States for Porto Rico.

BONOCIO RAMOS, Plaintiff,
vs.
THE PEOPLE OF PORTO RICO, Defendant.

Affidavit.

Manuel Dominguez, sixty-nine years of age, married, resident of Barceloneta and a sailor by occupation, under oath, deposes and says:

That ever since he was born he has lived in the "Palmas Altas" ward and is perfectly acquainted with the property owned by Nicasio Ramos, later on acquired by Bonocio Ramos. That there was some litigation about this property between Bonocio Ramos and Elisa Kortright, by virtue of which litigation, this property passed over to the latter.

That said property is the same as is now claimed by Bonocio Ramos.

Said property is bounded on the West by lands which belonged to my sister Sotera Dominguez and her husband Antonio Milasio. From the property owned by Antonio Milasio and Sotera Dominguez, deponent bought a parcel of land where he at present lives.

On the Western boundary of the property claimed by Ramos there is a parcel of land which is the property of Enrique Barnés, which parcel of land is, of course, to the north of my property.

106 That deponent was acquainted with María Angela, Marcial and José Antonio Fernandez, who were Pedro José Fernandez's children; that María Angela Fernandez was the wife of Bonocio Ramos, and that consequently her name is María Angela Fernandez de Ramos.

(Signed) His
MANUEL X DOMGINGUEZ.
mark.

No. 418.

Signed and sworn to before me, by Manuel Dominguez, of age, sailor, married and a resident of Barceloneta, who is personally known to me, this 16th day of May, 1912.

(Signed) PEDRO AMADO RIVERA,
Municipal Judge of Arecibo.

107 Filed July 26th, 1912.

Registry of Property.

Arecibo, P. R.

I, Jose Marcial Lopez, Registrar of Property for the District of Arecibo, do hereby certify: that in the books corresponding to the Municipality of Barceloneta the following described property does not appear recorded in the name of any person whatsoever:

"A rural estate situated in the barrio of Palmas Atlas, municipality of Barceloneta, known by the name of "llanadas," containing an area of fifty (50) cuerdas of land, of which twenty (20) are low lands, and the balance being sloping lands, bounded on the East by lands of Pedro José Fernandez; on the West by those of Carmen Peña and Antonio Milasio; on the South by the Caño de Tiburones, and on the North by the sea."

And to be forwarded to the Honorable Attorney Genera- of Porto

Rico, I issue the present in Arecibo this twenty first day of May nineteen hundred and twelve.

(Sgd.) JOSÉ MARCIAL LOPEZ, *Registrar.*

108 Filed July 29th, 1912.

In the District Court of the United States for Porto Rico.

BONOCIO RAMOS
vs.
THE PEOPLE OF PORTO RICO.

Motion.

Comes now The People of Porto Rico, the defendant herein and moves the court for an order extending the time in which to file in the Supreme Court of the United States, the transcript of record in the above entitled cause, up to and including the 15th day of November, 1912.

(Signed) WOLCOTT H. PITKIN, JR.,
Attorney General of Porto Rico.

Service accepted this 29th day of July, 1912.

(Signed) FRANK ANTONSANTI,
Attorney for Plaintiff.

109 Filed July 29, 1912.

In the District Court of the United States for Porto Rico.

BONOCIO RAMOS
vs.
THE PEOPLE OF PORTO RICO.

Order Extending Time in Which to File Transcript.

Upon motion of the defendant herein, The People of Porto Rico, for an extension of time in which to file the transcript herein in the Supreme Court of the United States, it is ordered that the time heretofore granted in which to file said transcript in the said Supreme Court of the United States be and the same is hereby extended up to and including the 15th day of November, 1912.

Dated at San Juan, P. R. this 29th day of July, 1912.

(Sgd.) PAUL CHARLTON,
District Judge.

110 Filed July 3, 1901.

In the District Court of the United States for Porto Rico, Sitting at San Juan, October Term, 1901.

ELIZA KORTRIGHT
vs.
BONOCIO RAMOS Y CABALLERO.

Summons.

UNITED STATES OF AMERICA,
The President of the United States, ss:

To the Marshal:

You are hereby commanded to summon Bonocio Ramos y Caballero, a citizen of Porto Rico and resident of Barceloneta Porto Rico to appear before the above named District Court of the United States for Porto Rico, in the Court room thereof in the City of San Juan Porto Rico on the second Monday of October next, being October 14th, 1901, and the first day of the October term of this court, to answer to the complaint of Eliza Kortright, a subject of the King of Great Britain, who demands of the said Defendant the possession of the following lands, towit; a rustic estate situated in the barrio of Palmas altas, district of Barceloneta, Porto Rico, composed of eighty cuerdas, equivalent to thirty one hectareas, forty four areas and thirty one centiareas of land devoted to pasture and agricultural purposes, bounded on the west with the lands of Francisco and Sotera Dominguez and lands of Doña Maria Angela Fernandez; on the east by the lands of the aforesaid Maria Angela Fernandez and José Antonio Fernandez and by the Caño de Tiburones on the north by the lands of the said Maria Angela and José Antonio Fernandez; on the south by the said Caño de Tiburones, and the said Plaintiff also demands Five Thousand Dollars as mesne profits for the detention thereof.

And in default of the said Defendant appearing and defending this action, judgment will be entered against him, and he will be turned out of possession of said lands and will be adjudged to pay the said sum of Five Thousand Dollars damages as mesne profits. And have you then and there this Writ of Summons.

(Signed) RICARDO NADAL,
Clerk District Court of the United States for Porto Rico.

(8135.)

110½ *Return on Service Writ.*

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed Writ on the therein-named Bonocio Ramos y Caballero by handing to

and leaving a true and correct copy thereof with Bonocio Ramos y Caballero personally near Barceloneta in said district on the 2nd day of July, A. D. 1901.

E. S. WILSON,
U. S. Marshal,
(Signed) By J. L. MILLER, *Deputy.*

111 Filed June 12, 1901.

In the District Court of the United States for Porto Rico, Sitting at San Juan, October Term, 1901.

ELIZA KORTRIGHT, Plaintiff,
vs.
BONOCIO RAMOS Y CABALLERO, Defendant.

Declaration in Ejectment.

Eliza Kortright, a subject of the King of Great Britian, Plaintiff complains of Bonocio Ramos y Caballero, Defendant, a citizen of Porto Rico, both being residents thereof, of a plea of trespass; for this, towit; that heretofore, towit, on the twenty fourth day of May 1900, the said Plaintiff was possessed and owner of an estate in fee simple absolute of a certain tract of land, with houses and other improvements thereon, described and situated as follows; a rustic estate situated in the barrio of Palmas-altas, district of Barceloneta, Porto Rico, composed of eighty cuerdas, equivalent to thirty one hectareas, forty four areas, and thirty one centiareas of land devoted to pasture and agricultural purposes, bounded on the west with the lands of Francisco and Sotera Dominguez and lands of Doña Maria Angela Fernandez; on the east by the lands of the aforesaid Maria Angela Fernandez and José Antonio Fernandez and by the Caño de Tiburones; on the north by the lands of the said Maria Angela and José Antonio Fernandez; on the south by the said Caño de Tiburones.

And the said Plaintiff says that she, being so possessed of the said tract and parcel of land, with a house and other improvements thereon, the said defendant afterwards, towit, on the twenty
112 fifth day of May 1900 entered into the same, and that he the said Defendant unlawfully withholds from the Plaintiff the possession of said tract of land with improvements thereon, all of which greatly exceed in value the sum of One Thousand Dollars, to the Plaintiff's damage, in the sum of Five Thousand Dollars, for which judgment is asked together with the recovery of said tract of land, as aforesaid, for which plaintiff brings this suit.

(Signed) ELIZA KORTRIGHT, *Plaintiff,*
(Signed) By FRANCIS H. DEXTER,
Her Attorney.

113 Filed October 18, 1901.

In the District Court of the United States for Porto Rico.

ELIZA KORTRIGHT
vs.
BONOCIO RAMOS Y CABALLERO.

Rejoinder.

And the defendant says as to the matters contained in plaintiff's replication, secondly above pleaded, that the plaintiff by reason of anything contained in such replication ought not to have or maintain her aforesaid action thereof against him, the defendant, because he says that he did not acquire possession of the premises in question in bad faith, with knowledge that plaintiff was the owner thereof or entitled to the possession of the same, and defendant denies that plaintiff was illegally deprived of the possession of said premises and alleges that he owns part of said premises by inheritance from his mother and part by purchase and denies that plaintiff ever was the owner or entitled to the possession or in the possession of said premises, and defendant further alleges that he has public title to said premises and denies that his possession has ever been interrupted during the periods set forth in plaintiff's replication, or at all. And of this the defendant puts himself upon the country.

(Signed) F. D. MOTT, JR.,
Attorney for Defendant.

114 Filed October 14, 1901.

In the District Court of the United States for Porto Rico, San Juan, October Term, 1901.

ELIZA KORTRIGHT
vs.
BONOCIO RAMOS Y CABALLERO.

Replication.

Plaintiff joins issue upon Defendant's first plea and plaintiff as to said plea of defendant, and whereof he has put himself upon the country, doth the like. As to defendant's second, third and fourth pleas, plaintiff says that this cause of action did accrue within the period of time in said pleas set forth in manner and form, etc., and says that defendant acquired possession of the premises in question in bad faith and with knowledge that plaintiff was the owner thereof and entitled to the possession thereof and because plaintiff was illegally deprived of the said possession in this that defendant entered upon said premises and holds the same without

any written evidence of title and without payment therefor and without any public or private contract made in writing and because the possession of defendant has been interrupted during the periods above mentioned therefore plaintiff prays judgment.

(Signed) F. H. DEXTER,
Attorney for Plaintiff.

115 Filed October 19, 1901.

In the District Court of the United States for Porto Rico, Sitting at San Juan, Oct. Term, 1901.

ELIZA KORTRIGHT
vs.
BONOCIO RAMOS.

Surrejoinder.

Plaintiff joins issue upon the rejoinder to her replication to the said second plea of defendant.

And the Plaintiff, as to the rejoinder to the replication to the replication to the defendant's second plea says that during all of the times set forth in said second plea Plaintiff was a minor and not of lawful age.

(Signed) F. H. DEXTER,
Attorney for Plaintiff.

116 Filed November 19th, 1901.

In the District Court of the United States for Porto Rico, Sitting at San Juan.

ELIZA KORTRIGHT
vs.
BONOCIO RAMOS Y CABALLERO.

Judgment.

This cause having been tried at this the October Term, 1901, of this Court, the Jury returned a verdict herein on the 2nd day of November, 1901, in favor of plaintiff herein, Eliza Kortright, and found that defendant herein, Bonocio Ramos y Caballero, is guilty of unlawfully withholding from the said plaintiff the premises described in the declaration of this cause, as follows to wit:

An estate consisting of a certain tract of land, with houses and other improvements thereon, described and situated as follows: A rustic estate situated in the barrio of Palmas Altas, district of Barceloneta, Porto Rico, composed of eighty (80) cuerdas, equivalent to thirty one (31) hectares, forth four (44) areas, and thirty one (31) centiareas of land devoted to pasture and agricultural

purposes; bounded on the west with the lands of Francisco and Sotera Dominguez and lands of Doña María Angela Fernandez; on the east by the lands of the aforesaid María Angela Fernandez, and José Antonio Fernandez, and by the Caño de Tiburones; on the north by the lands of the said Mari- Angela and José Antonio Fernandez; on the south by the said Caño de Tiburones.

And the said Jury by their said verdict found no damages in favor of the said plaintiff by reason thereof.

Wherefore, it is considered, Ordered and Adjudged that
117 the said plaintiff, Eliza Kortright, do recover against the said defendant, Bonocio Ramos y Caballero, the possession of the said premises, according to the verdict of the said Jury for which a writ of habere facias possessionario may issue in her name and against said defendant at the end of two months from now unless the possession is sooner surrendered to her.

And it is further Adjudged that the said plaintiff, Eliza Kortright, recover against the said defendant Bonocio Ramos y Caballero, her costs herein, and that she, the said plaintiff, have execution therefor.

118 Filed March 7, 1902.

In the District Court of the United States for Porto Rico.

C. L. No. —.

ELIZA KORTRIGHT
vs.
BONOCIO RAMOS Y CABALLERO.

Writ of Possession—(Habere Facias Posesionem).

The President of the United States of America to the Marshal of the District of Porto Rico, Greeting:

You are hereby commanded, without delay, to cause the plaintiff, Eliza Kortright, to have possession of the following described property, to wit:

An estate consisting of a certain tract of land with houses and other improvements thereon, described and situated as follows:

A rustic estate situated in the barrio of Palmas Altas, District of Barceloneta, Porto Rico, composed of eighty (80) cuerdas, equivalent to thirty-one (31) hectareas, forth-four (44) areas and thirty-one (31) centiareas of land devoted to pasture and agricultural purposes; bounded on the west by the lands of Francisco and Sotera Dominguez and the lands of Doña María Angela Fernandez; on the east by the lands of the aforesaid Maria Angela Fernandez, and José Antonio Fernandez and by the Caño de Tiburones; on the north by the lands of the said Maria Angela and Jose Antonio Fernandez; on the south by the said Caño de Tiburones.

According as the said premises are described and recovery thereof adjudged to the plaintiff in this action.

And do you return this Writ unto the Clerk's Office of the said Court immediately after you have executed it, so endorsed as to show when and how you have executed the same.

Witness the Honorable William H. Holt, Judge of the said Court this 25th day of February A. D. 1902, and of the Independence of the United States of America the 126th.

[SEAL.] (Signed) RICARDO NADAL,
Clerk of the District Court of United States for Porto Rico.

119 In the District Court of the United States for Porto Rico.

#682. Law.

BONOCIO RAMOS
vs.
THE PEOPLE OF PORTO RICO.

I, Rafael Guillermety, Clerk of the District Court of the United States for Porto Rico, do hereby certify *that* the foregoing typewritten pages numbered 1 to 118, inclusive, to be a true and correct copy of certain proceedings in the above entitled cause, as called for by the præcipe filed by the counsel for the appellant, copy of which præcipe is hereto attached, excluding the transcript of testimony.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 1st day of October, A. D. 1912.

[Seal United States District Court for the District of Porto Rico.]

RAFAEL GUILLERMETY, *Clerk.*

Endorsed on cover: File No. 23,446. Porto Rico D. C. U. S. Term No. 390. The People of Porto Rico, plaintiff in error, vs. Bonocio Ramos. Filed December 6th, 1912. File No. 23,446.

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE PEOPLE OF PORTO RICO, PLAINTIFF in Error,
v.
BONOCIO RAMOS, DEFENDANT IN ERROR.

No. 390.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

MEMORANDUM FOR PLAINTIFF IN ERROR.

This was an action of ejectment and damages for mesne profits, brought against the People of Porto Rico without its consent, and sustained over its resistance (Amended Complaint R. 8; Demurrer challenging jurisdiction R. 9–10). Objection, *in limine*, to the Court's jurisdiction was overruled (R. 15) and the case allowed to go to the jury on issues of fact irrelevant to the present review. The jurisdictional objection was again made and overruled on a motion for a new trial, and judgment entered against Porto Rico for the disputed land and six thousand dollars damages (R. 17; praecipe for execution R. 46). To review this judgment the case is now here on writ of error.

The sole issue here is the jurisdiction of the lower court to entertain this suit against Porto Rico without its consent and against its active objection (Assignments 1 & 2, R. 47). This issue was decided below against Porto Rico in April and June, 1912 (R. 14 and 46). At that time, the suability of Porto Rico was still an open question. Since then—specifically since February 24, 1913—it has, of course, been settled that Porto Rico enjoys the exemption of a political sovereignty not to be sued without its consent (*Porto Rico* v. *Rosaly*, 227 U. S. 270). The *Rosaly* case is absolutely controlling of the present case, and necessarily calls for its reversal.

Conclusion.

It is respectfully submitted that the judgment of the lower court should be reversed, with instructions to the District Court of the United States for Porto Rico to dismiss the case for want of jurisdiction.

FELIX FRANKFURTER,
Law Officer,
Bureau of Insular Affairs.

FEBRUARY, 1914.

○

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

No. 390.

THE PEOPLE OF PORTO RICO, APPELLANT,

vs.

BONOCIO RAMOS, APPELLEE.

BRIEF FOR APPELLEE.

In the record in this case there are seven assignments of alleged error, but several of them are merely cumulative and seem to have been taken as a matter of caution to preserve the record and not for the purpose of alleging distinct error.

The first three assignments of error present exactly the same question for decision by this honorable court, and we therefore consider them together and address our argument to them as a whole.

The three assignments of error referred to are as follows:

> "1. The court erred in overruling the demurrer to the complaint filed in the above-entitled action."

"2. The court erred in entertaining jurisdiction of the above-entitled cause, because for all necessary purposes of government, the defendant, The People of Porto Rico, is a sovereign and not liable to suit without its consent."

"3. The court erred in entertaining jurisdiction in the above-entitled cause, because this is a suit between plaintiff, a citizen of Porto Rico, and The People of Porto Rico, a body politic and corporate, organized under an act of Congress; both plaintiff and defendant being citizens of Porto Rico within the meaning of the act of Congress conferring jurisdiction upon the District Court of the United States for Porto Rico."

The purpose of these three assignments of error is to challenge the jurisdiction of the District Court on the ground that no suit can be maintained against The People of Porto Rico without their consent. As a general proposition this we do not dispute. In fact this court has so held in the case of The People of Porto Rico *vs.* Manuel Rosaly y Castillo, decided at the October term, 1912. But we think the present case widely different from that, and the general and unqualified proposition that The People of Porto Rico cannot be sued without their consent we think is not a question properly raised by this record.

But before considering this question in its other aspects we desire to direct the attention of the court to the manner in which The People of Porto Rico became a party to this cause.

Near the bottom of page 7 of the record it appears that a representative of the Attorney General of Porto Rico appeared in the District Court and informed the court that The People of Porto Rico were interested parties to this action, and upon such representation the court ordered that The People of Porto Rico be made a party defendant herein.

Again, near the middle of page 9 of the printed record it appears that the Attorney General of Porto Rico entered a general appearance for The People of Porto Rico. By doing so did he not submit to the jurisdiction of the District Court and estop himself from subsequently questioning the jurisdiction of that court? We submit that by such general appearance as attorney for The People of Porto Rico he admitted the jurisdiction of the District Court, consented to the suit on behalf of The People of Porto Rico, who had been previously made a party to the cause by the action of his assistant as set forth near the bottom of page 7 of the printed record.

In the Rosaly case The People of Porto Rico were defendants in the first instance. That cause was begun by the plaintiff against The People of Porto Rico, as appears from the first sentence of the opinion of Mr. Chief Justice White in that case. The present case was begun on November the twelfth, nineteen hundred and nine, not against The People of Porto Rico, but against Eduardo Wood, who was a subject of Great Britain, as judicial administrator for the estate of Eliza Kortright. After the death of Eliza Kortright it developed that she had left no heirs and had died intestate, and her estate therefore escheated to the State, to wit, The People of Porto Rico. The Attorney General of Porto Rico, in November of the following year and after the court had acquired jurisdiction of the parties by virtue of diversity of citizenship, then applied to the District Court for a postponement of this case, which had been commenced against the judicial administrator, to give himself time to investigate and determine whether The People of Porto Rico had any interest in the matter. Such postponement was granted, and the Attorney General concluding that The People of Porto Rico were interested, and on his so advising the court an order was entered making The People of Porto Rico a party defendant.

We think it vastly different to sue The People of Porto Rico and to have The People of Porto Rico subsequently

made a party after a suit has commenced against another defendant, who at the time of filing the suit was the only necessary party defendant. There is no dispute but that the District Court had jurisdiction of the original parties, and that jurisdiction having once attached cannot be ousted by the formal making of The People of Porto Rico a subsequent party.

There is no doubt but that The People of Porto Rico have become the sole beneficiaries of the estate of Eliza Kortright. This case was originally between the appellee Ramos and the administrator of Eliza Kortright. The People of Porto Rico were subsequently made parties defendant on motion of their Attorney General. Ramos can look only to the estate of Eliza Kortright to satisfy his decree. That estate has escheated to The People of Porto Rico. And now The People of Porto Rico, having all of the assets of Eliza Kortright, say in effect to Ramos, you cannot look to these assets to satisfy your just demands, because we have them and we are going to hide behind the sacred temple of sovereignty. It is admitted that this court has held that The People of Porto Rico can only be sued with their consent. But it is denied that The People of Porto Rico, when made a subsequent party to a suit already instituted against another defendant, can plead its attributes of sovereignty in such a case as this.

This suit is not really against The People of Porto Rico. It is against the assets of Eliza Kortright. Had Eliza Kortright lived the suit would have been against her, and the District Court would have had undisputed jurisdiction. If the estate of Eliza Kortright had not been administered, the suit would have been (as it was actually begun) against her administrator, and the District Court would have had undisputed jurisdiction (and actually did so have). Had Eliza Kortright left legal heirs surviving her the suit would have been continued against them and the jurisdiction of the District Court been undisputed, notwithstanding what their citizenship might have been. Now, can it be held that

the mere fact that Eliza Kortright left no legal heirs surviving her, and her estate escheating to The People of Porto Rico, and The People of Porto Rico being substituted as a party defendant in place of the judicial administrator in a cause already begun against him, that the jurisdiction of the District Court is ousted and the courts of justice forever closed against this appellee here, because The People of Porto Rico have been held in an entirely different case to have the attributes of sovereignty?

We think not, and we submit that this case is entirely different from the Rosaly case, in which The People of Porto Rico were the ORIGINAL parties defendant. In reality the present case is against the assets of Eliza Kortright, which by peculiar and unusual circumstance have fallen into the possession of The People of Porto Rico. The court must look to the substance of this case and not to the mere form.

In the law of escheat, while there is some conflict of authority, the general rule seems to be clear that the State takes escheated property charged with all of the valid debts and liabilities of the intestate, and creditors may enforce such claims against the property in the hands of the State, provided they are presented before being barred by the statutes of limitation.

Mobile Cong. Church *vs.* Morris, 8 Ala., 182.
Mooers *vs.* White, 6 Johnson's Ch. (N. Y.), 360.
Watson *vs.* Lyle, 4 Leigh (Va.), 236.

The State takes only the title which the intestate had and in the same condition, with all of the privileges and appurtenances and subject to all liens and encumbrances.

Casey *vs.* Inloes, 1 Gill (Md.), 430.
4 Kent Comm., 427.
3 Washburn on Real Property (6th ed.), 64.

In the present case, therefore, the right of The People of Porto Rico to the escheated estate of Eliza Kortright is necessarily subject to this suit, as The People of Porto Rico

took only such title as Eliza Kortright had, and if her title was bad to the land which is the subject-matter of this suit and was subject to ejectment by Ramos, the title that the State now claims is bad and is subject to the same ejectment.

> "The principle seems to be a universal one, that, if land escheats to the State, the latter takes the title which the party dying had, and none other."
> 3 Washburn on Real Property, 64.

> "It takes it, moreover, in the plight, and acquires it to the extent, to which the proprietor held it."
> 3 Washburn on Real Property (6th ed.), 64.
> 4 Kent Comm., 427.
> See note to case of Hamilton *vs.* Brown, U. S. 40; Law. Ed., 691.

We contend that the very act of the State in receiving and accepting the assets of Eliza Kortright in itself is a consent that creditors or adverse claimants may sue the State, if necessary, to enforce their rights against the escheated assets.

Our contention is in this case that the parties to the original suit being citizens of different States, to wit: the plaintiff a citizen of Porto Rico and the defendant as well as the deceased Eliza Kortright a British subject, and the jurisdiction of the District Court of the United States for Porto Rico having completely attached to the controversy, having so attached, it could not be devested by any subsequent events, and the court had full authority to proceed to a final determination of it, and if after the commencement of the suit the original defendant had been substituted by a citizen of Porto Rico the jurisdiction of the court would not be ousted by such change of citizenship in the parties.

Clarke *vs.* Mathewson *et al.*, 12 Peters, 163.
Morgan's Heirs *vs.* Morgan, 2 Wheat., 290-297.

The defendant Eduardo Woods was undisputedly in possession of the premises at the time the suit was brought, and consequently the plaintiff was not bound to look beyond the

person who, by his occupation of the disputed premises, was holding adversely to his claim, and if The People of Porto Rico were thereafter permitted to defend, that fact should not be sufficient to oust the jurisdiction which had already attached.

Phelps *vs.* Oaks, 117 U. S., 236.

If when this suit was brought the court acquired jurisdiction of the parties, no subsequent change of the parties can affect that jurisdiction.

In an action of ejectment, where the jurisdiction of the court has completely attached against the tenant in possession, the substitution of the landlord as a defendant for such tenant will in no way affect or defeat the jurisdiction of the court.

Hardenbergh *vs.* Ray, 151 U. S., 112.

As heretofore stated, when the case was filed in the District Court the parties thereto were Bonocio Ramos, who is a citizen of Porto Rico, plaintiff on one side, and Eduardo Woods, a British subject, as judicial administrator, defendant on the other, and we submit that this court has repeatedly held that no subsequent act can oust the court of jurisdiction.

The jurisdiction depends upon the state of things at the time the action is brought, and after it is once vested it cannot be ousted by a subsequent change of residence of either of the parties.

Mollan *et al. vs.* Torrance, 9 Wheaton, 535.

Thus it was also adjudged by this court that no change in the residence (citizenship) or condition of the parties can take away a jurisdiction which has once attached.

Dunn *vs.* Clarke, 8 Peters, 1.
Conolly *vs.* Taylor, 2 Peters, 555.

The plaintiff in this case, beyond question, had a substantial and real controversy with the original defendant,

Eduardo Woods. The object and purpose of the action was to recover possession of the tract of land in the visible and actual occupation of said Eduardo Woods, and it seems clear to us that no subsequent substitution of The People of Porto Rico as defendant could in any way affect or defeat the jurisdiction of the court, which had completely attached.

The fourth assignment of error is as follows:

> "The court erred in sustaining the objection of counsel for plaintiff to the introduction in evidence of the record, files, and proceedings in the case of Eliza Kortright y Kenny *vs.* Bonocio Ramos, No. 65, Law."

If ever a court did not err it was in the ruling complained of in this assignment of error. Throughout the trial of this case counsel for The People of Porto Rico sought to raise a legal imputation that the fifty acres which are the subject-matter of this suit constituted a part of another tract of eighty acres which was litigated beween Eliza Kortright and Bonocio Ramos in 1901, and which was the case No. 65, Law, referred to in the assignment of error. This imputation was sought to be used as the basis of a plea of *res adjudicata*.

The record, files, etc., of the case No. 65, Law, tried in 1901, were offered in evidence by counsel for The People of Porto Rico for the purpose of showing that Ramos filed in his defense in that case. As eighty acres of land were the subject-matter of that suit and fifty acres of land are the subject-matter of the present case, there was absolutely nothing to show that the fifty acres had ever been in litigation. There was no evidence of any kind to show that the fifty acres were part of the eighty acres. The only evidence on that point was that the fifty acres were not a part of the eighty acres which had been litigated in the former case. Ramos himself so testified (Record, pp. 30 and 31). The court, however, temporarily admitted the record, files, etc., subject to connection, the trial judge using this language:

> "They will be admitted temporarily subject to connection; if you will tell me that you will connect them with other evidence to show except by inference that the parcels are identical, I will admit them, but unless you mean to follow it by other evidence to show that these fifty acres were a part of those eighty acres, they will be excluded."
>
> **Record, p. 30.**

Counsel for The People of Porto Rico was unable to produce any other evidence, and at the conclusion of the testimony, on motion of Ramos' counsel, the record, files, etc., were, of course, excluded.

The fifth assignment of error is as follows:

> "The court erred in sustaining the objection of the attorney for the plaintiff to the question propounded on behalf of the defendant on the cross-examination of the witness Bonocio Ramos as to whether or not upon the trial of the case of Eliza Kortright y Kenny *vs.* Bonocio Ramos, No. 65, Law, in nineteen hundred and one, he did not introduce as his muniment of title the deed marked Exhibit "A" which he now introduces as his title of ownership to the land involved in this action."

After the examination and cross-examination of Bonocio Ramos, who testified as a witness in his own behalf, had been completed, counsel for The People of Porto Rico sought to recall him for further cross-examination, to ask him the question set out in this assignment of error.

By this question he sought to show that the same deed that Ramos presented as evidence of his title to the fifty-acre tract here in litigation was used by him in his defense to the action of ejectment concerning the eighty-acre tract in 1901; in short, that he now claims the fifty-acre tract under the same deed that he formerly claimed the eighty-acre tract from which Eliza Kortright ejected him in 1901.

In the first place, this question was improper cross-examination. In the second place, it was immaterial, because the deed in question was not the only title and not the sole defense in the case in 1901. No evidence was offered to show that the deed was the only defense made in the eighty-acre suit. In order to make this question material it would be necessary to lay a proper foundation by showing that the deed was the only defense made in the eighty-acre suit in 1901. This foundation was not laid, because the real facts did not permit it. The question was clearly not competent and was properly excluded by the court.

The sixth and seventh assignments of error present no new question for decision by this court. The plaintiff, in his complaint, stated a case clearly entitling him to the relief prayed for, fully sustained his case by his evidence, and the court could have had no alternative upon the verdict of the jury than to enter a judgment against the defendant.

It is submitted that there is no reversible error in the record, and the judgment should be affirmed.

Respectfully submitted,

FRANK ANTONSANTI,
FREDERICK S. TYLER,
Attorneys for Appellee.

PEOPLE OF PORTO RICO *v.* RAMOS.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

No. 390. Submitted February 25, 1914.—Decided March 16, 1914.

Immunity of sovereignty from suit without consent does not permit the sovereign to reverse the action invoked by it so that it may come in and go out of court at will without the right of the other party to resist either step.

While Porto Rico may not in ordinary actions be sued without its consent, a voluntary appearance after due consideration and request to be made a party by the Attorney General on the ground of interest in the controversy, amounts to a consent, and thereafter Porto Rico cannot object to the jurisdiction on account of its immunity as a sovereign. *Porto Rico* v. *Rosaly*, 227 U. S. 270, distinguished.

Where the District Court of the United States for Porto Rico had jurisdiction of an action involving title to real estate brought by a citizen of Porto Rico against a foreign subject, the jurisdiction is not ousted because Porto Rico becomes, on the application of the Attorney General, the sole party defendant.

Quære, whether Porto Rico cannot be made a party defendant without its consent to an action involving title to real estate claimed to be an escheat.

THE facts, which involve the immunity of sovereignty from suit as applied to Porto Rico and the determination of what constitutes consent to be sued, are stated in the opinion.

Mr. Felix Frankfurter for plaintiff in error.

Mr. Frank Antonsanti and *Mr. Frederick S. Tyler* for defendant in error.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Action in ejectment for certain described lands in Porto Rico brought by defendant in error, a citizen of Porto Rico, against Eduardo Wood, a subject of Great Britain.

Defendant in error alleged in his complaint that he was the owner, possessed and entitled to the possession of the lands and that Wood, claiming that the property belonged to the estate of Eliza Kortright, of which he was the duly appointed administrator, without right or title entered upon the lands and ejected defendant in error therefrom. Restitution of the lands was prayed and damages in the sum of $5000.

The complaint was filed November 12, 1909, and process duly issued thereon. On November 19, 1909, the defendant, Wood, filed a paper entitled "Motion to make the People of Porto Rico a party defendant and for an

extension of time to plead." It was alleged in the motion that the People of Porto Rico had been declared and adjudged to be the sole heir of Eliza Kortright by an order made by the District Court in and for the Judicial District of San Juan, she having died intestate and without leaving any legal heirs.

That the People of Porto Rico, by virtue of such declaration of heirship, have an interest in the result of the suit and ought to be joined as co-defendants.

That the defendant desired an extension of time to file a demurrer or answer to the complaint, as he might be advised, to the 2nd of December, 1909.

An order was prayed making the People of Porto Rico a party, for service upon them, and that time for pleading be extended.

Subsequently defendant filed an answer denying each and every material allegation of the complaint and prayed a dismissal of the action.

The case, by consent, was subsequently set for trial and a jury empaneled. Thereupon Harvey M. Hutchinson, representing the Attorney General of Porto Rico, petitioned the court for a continuance of the trial for time to enable him to ascertain if the People of Porto Rico should be made a party defendant to the cause. In pursuance of the petition the court continued the case. Upon the date to which the cause was continued Hutchinson again, as representing the Attorney General of Porto Rico, appeared in behalf of the People of Porto Rico and represented to the court that the People of Porto Rico were interested parties to the action. The court thereupon ordered the People of Porto Rico to be made a party. The jury was excused, the cause continued and the plaintiff (defendant in error) was "directed to amend his complaint so as to show the People of Porto Rico to be a party defendant."

An amended complaint was filed December 15, 1910.

It alleged the plaintiff to be a citizen of Porto Rico and the defendant "a body politic, created by the Congress of the United States being a citizen thereof." That plaintiff was the owner of a "rustic estate," describing it, and in possession thereof, and that one Eliza Kortright, since deceased, ejected plaintiff therefrom and continued in possession thereof up to her death. That, therefore, her estate was placed under judicial administration under the direction of Eduardo Wood, as judicial administrator, which judicial administration ceased during the month of November, 1910, and the administrator discharged. That, therefore, the defendant, The People of Porto Rico, was adjudged by the District Court of San Juan the only heir to the estate of Eliza Kortright, as she left no heirs. That The People of Porto Rico, as such heir continues to possess the land without right or title thereto, against the will of plaintiff, and to his damage in the sum of $6000, which sum was prayed as rents and profits, together with restitution of the land.

Upon motion of the Attorney General of Porto Rico his name was entered as counsel for The People of Porto Rico and leave granted to file a demurrer.

The demurrer recited that the Attorney General appeared specially for the sole purpose of challenging the jurisdiction of the court in the case and demurred to the amended complaint for the following reasons: (1) Because the suit was one between plaintiff, a citizen of Porto Rico, and The People of Porto Rico as sole defendant, and that both plaintiff and defendant being citizens of Porto Rico within the meaning of the act of Congress conferring jurisdiction on the court, the court had no jurisdiction. (2) Because The People of Porto Rico as a recognized entity, was so far a sovereign as to be exempt from suit at the instance of private individuals.

The demurrer was overruled and on the eleventh of January, 1911, an answer was filed in which defendant in-

sisted and pleaded that it "had such attributes of sovereignty" as exempted it from suit. The rest of the answer denied the allegations of the complaint and set up judgments obtained in two separate suits brought by Eliza Kortright against defendant in error in which it was adjudged against him that she was the owner of the lands sued for by plaintiff in the present action.

The action was tried to a jury which found for plaintiff (defendant in error) and assessed damages at $6000, in accordance with which judgment was entered. A new trial was moved and denied, and this writ of error granted.

But one contention is argued, that is, that the District Court had no jurisdiction to entertain the suit against Porto Rico "without its consent and against its active opposition." *Porto Rico* v. *Rosaly*, 227 U. S. 270, is cited to sustain the contention. It was said in that case that the government "established in Porto Rico is of such a nature as to come within the general rule exempting a government sovereign in its attributes from being sued without its consent." This case, however, is not within the rule. In that case Porto Rico was a defendant in the first instance. In this case it voluntarily petitioned to be made a party, asserting rights to the property in controversy, and, against the opposition of the plaintiff (defendant in error), it was made a party defendant. And this action was not improvident. Its Attorney General took time to consider. He applied for and obtained a continuance of the case to determine the best course to secure the interests of the People of Porto Rico, whether to assert its rights in the then litigation or attempt to keep them under the immunity of its sovereignty from attack. His decision had the support of substantial reasons. The property came to Porto Rico as an escheat, and came therefore as it was held by Eliza Kortright and Wood. If held in wrong by them, it was held in wrong by it, and the Attorney General may have considered it well worth

while to face the controversy rather than remit it to some other proceeding that the plaintiff might institute, fortified, perhaps, by a decision in his favor. *United States* v. *Lee*, 106 U. S. 196; *Stanley* v. *Schwalby*, 147 U. S. 508. But, whatever his reasons, he certainly asked for time, as we have seen, "to enable him to ascertain if the People of Porto Rico should be made a party defendant" in the cause, and, having been granted the time, he appeared again in the cause and represented to the court that Porto Rico was an interested party to the action, and the court, having heard the arguments of opposing counsel, ordered Porto Rico to be made a party and directed plaintiff to amend his complaint in execution of the order. Porto Rico, therefore, through its Attorney General, not only gave its consent to be a party to the cause but invoked and obtained the ruling of the court against the resistance of the plaintiff to make it a party to the cause.

The complaint having been amended as moved and directed and nearly a year having elapsed, there came a change of view, but the immunity of sovereignty from suit without its consent cannot be carried so far as to permit it to reverse the action invoked by it and to come in and go out of court at its will, the other party having no right of resistance to either step.

In placing our decision upon the consent of Porto Rico to be made a party defendant under the circumstances presented by this case, we do not wish to imply that Porto Rico could not have been made a party without its consent, the property being an escheat. As to that we express no opinion.

There is an assignment of error based on the proposition that by the amendment of the complaint the plaintiff and Porto Rico became the sole parties to the action, and they being citizens of Porto Rico the court lost jurisdiction of it. The proposition is not urged by plaintiff in error in its brief, and if the proposition did not raise a question of

jurisdiction we might pass it without comment. It is, however, enough to say of it that the original defendant Wood was properly sued, he then being a subject of Great Britain and in possession of the land. Porto Rico subsequently becoming a party did not oust the jurisdiction. *Phelps* v. *Oaks*, 117 U. S. 236; *Hardenbergh* v. *Ray*, 151 U. S. 112.

Judgment affirmed.